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Report of the Working Group on Enforced or Involuntary Disappearances*

Summary

The Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a universal mandate by resolution 20 (XXXVI) of 29 February 1980 of the Commission on Human Rights. The mandate was most recently extended by the Human Rights Council in its resolution 27/1 of 25 September 2014.

The mandate of the Working Group is to assist families of disappeared persons to ascertain the fate and whereabouts of their disappeared relatives; and to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance and to provide States with assistance in the implementation of those norms.

Since its inception, the Working Group has transmitted a total of 54,557 cases to 105 States. The number of cases under active consideration stands at 43,563 in a total of 88 States. During the reporting period, 65 cases were clarified.

The present report reflects the activities of and communications and cases examined by the Working Group on Enforced or Involuntary Disappearances covering the period 17 May 2014 to 15 May 2015.

* The annexes to the present report are circulated as received, in the language of submission only.

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I. Introduction

1. The Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a universal mandate, by the Commission on Human Rights resolution 20 (XXXVI) of 29 February 1980. The mandate was most recently extended by the Human Rights Council in its resolution 27/1 of 25 September 2014.

2. The primary task of the Working Group is to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared. In that humanitarian capacity, the Working Group serves as a channel of communication between family members of victims of enforced disappearance and other sources reporting cases of disappearances, and the Governments concerned.

3. Following the adoption by the General Assembly of its resolution 47/133 and of the Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter "the Declaration"), the Working Group was entrusted to monitor the progress of States in fulfilling their obligations derived from the Declaration. The Human Rights Council, in its resolution 7/12, encouraged the Working Group to provide assistance in the implementation by States of the Declaration and of existing international rules.

4. The present report reflects the activities of and communications and cases examined by the Working Group covering the period from 17 May 2014 to 15 May 2015. A summary of the decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period is presented in a table (see sect. III).

5. Since its inception, the Working Group has transmitted a total of 54,557 cases to 105 States. The number of cases under active consideration that have not yet been clarified, closed or discontinued stands at 43,563 in a total of 88 States. During the reporting period, 65 cases were clarified.

6. The Working Group notes with appreciation that there has been an improvement in speed of the translation of the replies received from Governments concerning cases.

7. In spite of some improvements to the content and layout of the English web page of the Working Group's website, the Working Group regrets that the majority of the content on the website is in English only. The Working Group once again calls on the Office of the United Nations High Commissioner for Human Rights to provide adequate resources to bring it up to date and render it more accessible.

8. The Working Group is grateful to the Human Rights Council and the General Assembly for the recognition, through the granting of an additional post under the regular budget, of its need to receive additional support, given its huge workload and variety of activities. It is also thankful for the continuous support, including through voluntary contributions, provided by donor States, notably Argentina, France and Japan.

II. Activities of the Working Group on Enforced or Involuntary Disappearances: 17 May 2014 to 15 May 2015

A. Activities

9. During the period under review, the Working Group held three sessions: the 104th session, from 15 to 19 September 2014; the 105th session, from 2 to 6 March 2015; and the

106th session, from 6 to 15 May 2015. The 105th session was held in Buenos Aires and the other sessions were held in Geneva.

10. Further to its comments in 2012 annual report (A/HRC/22/45 and Corr.1, para. 5) the Working Group has continued to produce post-sessional documents to allow the translation of information and timely reporting on its activities.

11. Post-sessional documents were adopted and published after the 104th (A/HRC/WGEID/104/1); 105th (A/HRC/WGEID/105/1); and 106th (A/HRC/WGEID/106/1) sessions. Those post-sessional documents should be considered complements to the present annual report.[1]

12. As from 1 October 2013, the Chair-Rapporteur of the Working Group has been Ariel Dulitzky. Jasminka Dzumhur was elected Vice-Chair during the 104th session of the Working Group. Olivier de Frouville completed his appointment as a member of the Working Group on 31 October 2014 and was replaced by Bernard Duhaime, appointed in October 2014. The other members of the Working Group are Houria Es Slami and Osman El-Hajjé.

13. On 12 September 2014, the Chair-Rapporteur presented the annual report for the period 10 November 2012 to 16 May 2014 to the Human Rights Council at its twenty-seventh session, and participated in the interactive dialogue with Member States.

14. Between 29 September and 3 October 2014, the Vice-Chair represented the Working Group during the twenty-first annual meeting of special rapporteurs/representatives, independent experts and working groups of the special procedures of the Council.

15. On 22 October 2014, the Chair-Rapporteur of the Working Group addressed the General Assembly at its sixty-ninth session and participated in the interactive dialogue with Member States. That was the third consecutive time that the Chair-Rapporteur addressed the General Assembly, which was highly valued and appreciated.

16. On 24 November 2014, the Vice-Chair took part in an expert consultation entitled "Human rights considerations relating to the administration of justice through military tribunals and role of the integral judicial system in combating human rights violations", organized by the Office of the United Nations High Commissioner for Human Rights, pursuant to Human Rights Council resolution 25/4.

17. The Working Group held its 105th session in Argentina from 2 to 6 March 2015, to mark the 35th anniversary of its creation. The Working Group is grateful to the Government of Argentina for this opportunity. The Working Group continues its practice to have one of its sessions per year outside Geneva.

18. On 23 March 2015, Mr. Duhaime participated in a "Meeting of victims and human rights defenders" on the occasion of the International Day for the Right to Truth concerning Gross Human Rights Violations and for the Dignity of Victims in San Salvador.

19. During the reporting period, all the members of the Working Group carried out a number of activities connected to enforced disappearance, which included their participation in conferences, consultations, seminars, training events, workshops and lectures, organized by Governments and/or civil society organizations.

[1] See http://www.ohchr.org/EN/Issues/Disappearances/Pages/Annual.aspx.

B. Meetings

20. During the period under review, representatives of the Governments of: Angola, Algeria, Japan, Morocco, Qatar, Sri Lanka, and Tajikistan (104th); Argentina and Japan (105th); Bhutan, Gabon, Japan and the Republic of Korea (106th) attended the sessions of the Working Group. A number of informal meetings were also held with representatives from various States. The Working Group expresses its appreciation to those Governments for the meetings and emphasizes the importance of cooperation and dialogue.

21. The Working Group also met with the Committee on Enforced Disappearances during its 104th session, and held two meetings with the President of the Human Rights Council during the reporting period. It also met with State representatives from the African and Asian regional groups during the 104th and 106th sessions, as well as representatives of international governmental organizations, relatives and associations of relatives of disappeared persons, and non-governmental organizations.

C. Communications

22. During the reporting period, the Working Group transmitted 384 new cases of enforced disappearance to 33 States.

23. The Working Group transmitted 151 of the above-mentioned cases under the urgent action procedure to Bahrain, Bangladesh, Cuba, the Democratic Republic of the Congo, Egypt, Gambia, Honduras, the Islamic Republic of Iran, Jordan, Kenya, Mexico, Oman, Pakistan, the Syrian Arab Republic, the United Arab Emirates and Zimbabwe.

24. The Working Group clarified 65 cases, in Algeria (1), Bahrain (1), Chile (10), China (1), Cuba (1), Egypt (6), the Gambia (3), Georgia (1), Guatemala (1), Oman (1), Pakistan (12), Peru (3), Saudi Arabia (3), Sri Lanka (10), the Syrian Arab Republic (5), Tajikistan (1), Turkey (1), the United Arab Emirates (2) and Uruguay (2). Of the 65 cases, 32 were clarified on the basis of information provided by Governments, and 33 on the basis of information provided by sources.

25. The Working Group transmitted 13 prompt intervention communications addressing allegations of harassment of and/or threats to human rights defenders and relatives of disappeared persons in Colombia, El Salvador, Honduras, India, Mexico, the Russian Federation and Sri Lanka.

26. It transmitted 21 urgent appeals concerning persons who had been arrested, detained, abducted or otherwise deprived of their liberty or who had been forcibly disappeared or were at risk of disappearance in Burundi, China, Congo, Eritrea and the Islamic Republic of Iran.

27. The Working Group transmitted seven general allegations, to the Governments of Bahrain, Colombia, the Democratic Republic of the Congo, El Salvador, Kenya, Pakistan and Paraguay.

28. It also transmitted six other letters to the Governments of Guatemala, India, Morocco, Nepal and Spain.

D. Country visits

29. The Working Group, represented by Mr. Dulitzky, Ms. Dzumhur and Mr. El-Hajjé visited Croatia, Montenegro and Serbia including Kosovo from 15 to 30 June 2014. The reports on the visit are contained in addenda to the present report (A/HRC/30/38/Add.1,

Add.2 and Add.3). The Working Group thanks the Governments of Croatia, Montenegro and Serbia for the invitation as well as for the cooperation extended to it, before and during its visit to the country. It also thanks United Nations Interim Administration Mission in Kosovo and the Kosovo authorities for the assistance in the context of the visit to Kosovo.

30. At the invitation of the Government of Peru, the Working Group visited the country from 1 to 10 June 2015. The Working Group thanks the Government of Peru for the invitation and the cooperation extended to it. It also thanks the other States that have extended invitations to the Working Group to visit their countries: the Governments of Sri Lanka and Turkey, which invited the Working Group to undertake a visit in 2015; as well as the Governments of Albania, which extended an invitation to the Working Group for 2016, and the Sudan, which extended an invitation in principle.

31. During the reporting period, the Working Group requested visits to Albania, Bahrain, the Former Yugoslav Republic of Macedonia, Rwanda and South Africa.

32. In addition to these new requests, the Working Group has requested in the past a visit to the following countries, without having yet received a positive response: Bangladesh, Belarus, Burundi, China, Egypt, India, Indonesia, Kenya, Nepal, Nicaragua, the Philippines, the Russian Federation, South Sudan, the Syrian Arab Republic, Thailand, the United Arab Emirates, Uzbekistan and Zimbabwe. The Working Group invites all States that have received a request for a visit by the Working Group to respond favourably to it, in accordance with Human Rights Council resolution 21/4.[2]

33. The Working Group recalls the fact that the Islamic Republic of Iran agreed to a visit by the Working Group in 2004, which was delayed at the request of the Government. The Working Group calls upon the Government to set the dates for the visit. Similarly, the Working Group regrets that the visit to Algeria did not materialize, in spite of an invitation extended to visit the country in the second half of 2014.

E. Follow-up reports and other procedures

34. The Working Group prepared follow-up reports on the implementation of recommendations made following its visits to Mexico and Timor-Leste. The follow-up reports are contained in an addendum to the present report (A/HRC/30/38/Add.4).

F. Press releases and statements

35. On 30 May 2014, the Working Group, jointly with other special procedures, issued a press statement emphasizing that the decision of the Security Council not to refer the situation in the Syrian Arab Republic to the International Criminal Court leaves the door wide open for new atrocities in the ongoing conflict.[3]

36. On 13 June 2014, the Working Group, jointly with other special procedures, issued a press release in which it urged Thailand authorities to reverse all measures affecting basic rights and to restore democratic rule in the country, and stressed that stability and reconciliation could hardly be achieved in Thailand if human rights guarantees were neglected.[4]

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[2] Please see annex I for country visit requests and invitations extended.

[3] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14655&LangID=E.

[4] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14696&LangID=E.

37. On 4 July 2014, the Working Group issued, jointly with other special procedures mandate holders, a press release in which it called upon the Government of Nepal to amend its new legislation allowing for amnesties in cases of serious violations of human rights and humanitarian law.[5]

38. On 11 July 2014, the Working Group issued a statement at the end of its visit to the Western Balkans emphasizing the urgent need for new national and regional strategies and a renewed commitment at the highest political level to address the question of enforced disappearances and missing persons.[6]

39. On 8 August 2014, the Working Group issued a press release welcoming the reunion of Argentine activist Estela de Carloto with her grandson after 36 years and urging full support for families of the disappeared from Governments around the world.[7]

40. On 30 August 2014, the Working Group issued a press release jointly with the Committee on Enforced Disappearances on the occasion of the International Day of the Victims of Enforced Disappearances calling all States to remove all obstacles to aid investigations into the fate of disappeared persons.[8]

41. On 17 September 2014, the Working Group, jointly with the Committee on Enforced Disappearances, issued a statement on the occasion of the fourth meeting between the two bodies, held on 17 September 2014.[9]

42. On 29 September 2014, the Working Group issued a press release, jointly with other special procedure mandate holders, calling on the Government and the Congress of Colombia to reconsider the possible adoption of Bill No. 85 (Senate) of 2013, which aims to restructure and expand the scope of the jurisdiction of military courts.[10]

43. On 10 October 2014, the Working Group issued a press release underlining that the investigation of the killings and enforced disappearances of students in the State of Guerrero, Mexico, represent a crucial test for the willingness and the capacity of Mexico to deal with serious violations of human rights.[11]

44. On 23 October 2014, a press release was issued at the occasion of the presentation of the Chair of the Working Group to the General Assembly.[12]

45. On 19 November 2014, the Working Group, jointly with other mandate holders, raised the alarm over the potential imminent release of Milorad Trbić, who was convicted in 2009 by the Bosnian State Court of committing genocide in Srebrenica and sentenced to 30 years in prison.[13]

46. On 26 November 2014, the Working Group, jointly with other special procedure mandate holders, urged the President of the United States of America Barack Obama to support the fullest possible release of the report on Central Intelligence Agency interrogation practices conducted by the Senate Select Committee on Intelligence.[14]

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[5] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14824&LangID=E.
[6] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14854&LangID=E.
[7] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14929&LangID=E.
[8] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14970&LangID=E.
[9] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15087&LangID=E.
[10] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15125&LangID=E.
[11] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15155&LangID=E.
[12] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15199&LangID=E.
[13] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15310&LangID=E.
[14] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15348&LangID=E.

47. On 26 February 2015, the Working Group announced the holding of its 105th session in Argentina, 35 years after its creation in response to the disappearances committed by the dictatorship there.[15]

48. On 10 March 2015, a story was published on the OHCHR website on the holding of the 105th session in Argentina.[16]

49. On 27 March 2015, the Working Group, jointly with other special procedure mandate holders, issued a press release calling the Government of Spain to either try or extradite individuals allegedly responsible of grave human rights violations, including enforced disappearances.[17]

50. On 21 April 2015, the Working Group, jointly with other special procedure mandate holders, issued a press release welcoming the decision by the Supreme Court of Pakistan to suspend death sentences imposed by military courts.[18]

51. On 1 May 2015, the Working Group, jointly with other special procedure mandate holders, issued a press release welcoming the constitutional reform approved by the Parliament of Mexico to legislate on a number of human rights violations, including enforced disappearances.[19]

G. Thematic study on enforced disappearance and economic, social and cultural rights

52. The Working Group has completed its study on the relationship between enforced disappearances and economic, social and cultural rights. The report is contained in an addendum to the present report (A/HRC/30/38/Add.5).

53. That study examines the indivisibility of economic, social and cultural rights, and civil and political rights in the case of enforced disappearances. Enforced disappearance, by its nature, violates the economic, social and cultural rights of the disappeared person, his or her family and others. In addition, those lacking the full enjoyment of economic, social and cultural rights are, in many instances, more vulnerable to becoming victims of enforced disappearance.

54. The study also emphasizes how people who are active in promoting or exercising the enjoyment of economic, social and cultural rights are, in many contexts, at a greater risk of becoming victims of enforced disappearance. In such circumstances, enforced disappearances are used as a tool to deter people from promoting and exercising economic, social and cultural rights.

55. The Working Group also observes that, under the Declaration, States have an obligation to prevent and eradicate enforced disappearances and to provide reparations to all victims of enforced disappearances, taking into account the intrinsic connection between enforced disappearances and economic, social and cultural rights. Effective measures to prevent and eradicate enforced disappearances, and to provide reparation to the victims, require a comprehensive approach that encompasses proper promotion and protection of economic, social and cultural rights.

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[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15618&LangID=E.

[16] See www.ohchr.org/EN/NewsEvents/Pages/ExpertsInArgentina35YearsAfter.aspx.

[17] See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=15765&LangID=S (Spanish only).

[18] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15868&LangID=E.

[19] See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=15913&LangID=S (Spanish only).

III. Decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period[20]

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Afghanistan	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Albania	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Algeria	3 047	-	58	-	1	-	3 104	-	-	-	-	-	-	-	-
Angola	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Argentina[21]	3 271	-	1	-	-	-	3 271	-	-	-	-	-	-	-	-
Bahrain	3	1	-	1	-	-	3	-	-	1	-	-	1	1	-
Bangladesh	15	2	13	-	-	-	30	-	-	-	-	-	-	-	-
Belarus	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Bhutan	5	-	-	-	-	-	5	-	-	-	-	-	-	-	-
Bolivia (Plurinational State of)	28	-	-	-	-	-	28	-	-	-	-	-	-	-	-
Bosnia and Herzegovina	0	-	-	-	-	-	0	-	-	-	-	-	-	1	-
Brazil	13	-	-	-	-	-	13	-	-	-	-	-	-	-	-
Burundi	52	-	-	-	-	-	52	-	1	-	-	-	-	-	-

[20] Urgent actions are cases of enforced disappearances occurred within three months prior to the receipt of a report by the Working Group, or cases of enforced disappearances occurred prior to the three-month limit, but within one year prior to the receipt of a report by the Working Group, provided that there is a link with a case that occurred within the three-month period. Standard cases are cases of enforced disappearances occurred prior to the three-month limit. Prompt intervention letters concern cases of intimidation, persecution or reprisal against families of disappeared persons, witnesses, lawyers, human rights defenders and other individuals concerned with disappearances. Urgent appeals concern allegations of enforced disappearances; or allegations regarding persons deprived of liberty who are at risk of being disappeared. General allegations concern alleged obstacles encountered in the implementation of the Declaration.

[21] The Working Group determined during its 106th session that one case was a duplicate and subsequently expunged it from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Cambodia	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Cameroon	14	-	-	-	-	-	14	-	-	-	-	-	-	-	-
Central African Republic	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Chad	23	-	-	-	-	-	23	-	-	-	-	-	-	-	-
Chile	796	-	-	10	-	-	786	-	-	-	-	-	-	-	-
China	37	-	4	-	1	1	40	-	2	-	-	-	2	-	-
Colombia	971	-	-	-	-	-	971	2	-	1	-	1	-	-	-
Congo	88	-	1	-	-	-	89	-	1	-	-	-	-	-	-
Cuba	0	1	-	1	-		0				-				-
Democratic People's Republic of Korea	47	-	6	-	-	-	53	-	-	-	-	-	-	-	-
Democratic Republic of the Congo	45	1	1	-	-	-	47	-	-	1	-	-	-	-	-
Dominican Republic	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Ecuador	5	-	-	-	-	-	5	-	-	-	-	-	-	-	-
Egypt[22]	52	66	13	3	3	16	124	-	-	-	-	-	1	-	-
El Salvador	2 277	-	3	-	-	-	2 280	1	-	1	-	1	-	-	-
Equatorial Guinea	8	-	-	-	-	-	8	-	-	-	-	-	-	-	-
Eritrea	54	-	2	-	-	-	56	-	1	-	-	-	-	-	-
Ethiopia	112	-	-	-	-	-	112	-	-	-	-	-	-	-	-

[22] The Working Group determined during its 106th session that one case was a duplicate and subsequently expunged it from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
France	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Gambia	3	7	-	-	3	-	7	-	-	-	-	-	-	-	-
Georgia	1	-	-	1	-	-	0	-	-	-	-	-	-	-	-
Greece	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Guatemala[23]	2 899	-	-		1	-	2 897	-	-	-	1	-	-	-	1
Guinea	37	-	-	-	-	-	37	-	-	-	-	-	-	-	-
Haiti	38	-	-	-	-	-	38	-	-	-	-	-	-	-	-
Honduras	129	1	-	-	-	-	130	1	-	-	-	-	-	-	-
India	354	-	-	-	-	-	354	1	-	-	1	-	-	-	-
Indonesia	163	-	-	-	-	-	163	-	-	-	-	-	-	-	-
Iran (Islamic Republic of Iran)	518	2	2	-	-	2	522	-	1	-	-	-	-	-	-
Iraq	16 408	-	-	-	-	-	16 408	-	-	-	-	-	-	-	-
Israel	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Jordan	2	1	-	-	-	-	3	-	-	-	-	-	-	-	-
Kenya	60	1	-	-	-	-	61	-	-	1	-	-	-	-	-
Kuwait	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Lao People's Democratic Republic	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Lebanon	313	-	-	-	-	-	313	-	-	-	-	-	-	-	-
Libya	10	-	-	-	-	-	10	-	-	-	-	-	-	-	-
Maldives	0	-	-	-	-	-	0	-	1	-	-	-	-	-	-
Mauritania	4	-	-	-	-	-	4	-	-	-	-	-	-	-	-

[23] The Working Group determined during its 106th session that one case was a duplicate and subsequently expunged it from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period: Urgent actions	Cases transmitted to the Government during the reporting period: Standard cases	Cases clarified during the period under review by: Government	Cases clarified during the period under review by: Sources (6-month rule)	Number of cases of possible clarification by Government	Number of outstanding cases at the end of the period under review	Communications sent during the period under review: Prompt intervention letter	Communications sent during the period under review: Urgent appeal	Communications sent during the period under review: General allegation	Communications sent during the period under review: Other letter	Communications received during the period under review: Response to prompt intervention letter	Communications received during the period under review: Response to urgent appeal	Communications received during the period under review: Response to general allegation	Communications received during the period under review: Response to other letter
Mexico	359	2	5	-	-	-	366	4	2	-	-	2	2	-	-
Morocco	60	-	26	-	-	-	86	-	-	-	1	-	-	-	-
Mozambique	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Myanmar	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Namibia	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Nepal	459	-	-	-	-	-	459	-	-	-	1	-	-	-	1
Nicaragua	103	-	-	-	-	-	103	-	-	-	-	-	-	-	-
Norway	0	-	-	-	-	-	0	-	-	-	-	-	1	-	-
Oman	0	1	1	-	1	-	1	-	1	-	-	-	-	-	-
Pakistan	151	57	4	-	12	-	200	-	-	1	-	-	-	-	-
Paraguay	0	-	-	-	-	-	0	-	-	1	-	-	-	1	-
Peru[24]	2 370	-	-	-	3	-	2 365	-	-	-	-	-	-	-	-
Philippines	625	-	-	-	-	-	625	-	-	-	-	-	-	-	-
Russian Federation	471	-	5	-	-	-	476	1	-	-	-	-	-	-	-
Rwanda	21	-	1	-	-	-	22	-	1	-	-	-	1	-	-
Saudi Arabia	6	-	2	2	1	-	5	-	-	-	-	-	-	-	-
Senegal	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Seychelles	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Somalia	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
South Africa	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
South Sudan	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Spain	6	-	-	-	-	-	6	-	-	-	2	-	-	1	-
Sri Lanka	5 731	-	29	10	-	7	5 750	3	-	-	-	-	-	-	-

[24] The Working Group determined during its 104th session that two cases were duplicates and subsequently expunged them from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Sudan	173	-	-	-	-	-	173	-	1	-	-	-	1	-	-
Syrian Arab Republic	102	2	31	-	5	-	130	-	2	-	-	-	1	-	-
Tajikistan	4	-	-	1	-	-	3	-	1	-	-	-	1	-	-
Thailand	81	-	1	-	-	-	82	-	1	-	-	-	1	-	-
Timor-Leste	428	-	-	-	-	-	428	-	-	-	-	-	-	-	-
Togo	10	-	-	-	-	-	10	-	-	-	-	-	-	-	-
Tunisia	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Turkey	62	-	18	1	-	-	79	-	1	-	-	-	-	-	-
Turkmenistan	1	-	2	-	-	-	3	-	-	-	-	-	-	-	-
Uganda	15	-	-	-	-	-	15	-	-	-	-	-	-	-	-
Ukraine	4	-	1	-	-	-	5	-	1	-	-	-	-	-	-
United Arab Emirates[25]	12	5	2	-	2	6	16	-	2	-	-	-	2	-	-
Uruguay	19	-	-	2	-	-	17	-	-	-	-	-	-	-	-
Uzbekistan	7	-	-	-	-	-	7	-	-	-	-	-	-	-	-
Venezuela (Bolivarian Republic of)	12	-	-	-	-	-	12	-	-	-	-	-	-	-	-
Viet Nam	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Yemen	10	-	1	-	-	-	11	-	1	-	-	-	-	-	-
Zimbabwe	4	1	-	-	-	-	5	-	-	-	-	-	-	-	-
State of Palestine	4	-	-	-	-	-	4	-	-	-	-	-	-	-	-

[25] The Working Group decided during its 104th session to transfer one case registered under the statistics of the United Arab Emirates to Egypt

IV. Observations

56. In addition to the observations formulated in its post-sessional documents (see para. 11 above), the Working Group makes the following country-specific observations based on the cooperation received and on significant developments regarding its mandate during the whole reporting period.

Albania

57. The Working Group thanks the Government of Albania for the invitation to the Working Group to visit the country. The Working Group hopes that the visit can be carried out in the course of 2016.

Algeria

58. The Working Group expresses its deep disappointment that, in spite of an official communication received in February 2014 in which the Government of Algeria invited the Working Group to visit Algeria during the second semester of 2014, it has not accepted the different dates offered by the Working Group. The Working Group hopes that it can soon be allowed to conduct a visit to the country.

Bahrain

59. The Working Group thanks the Government for the reply to the general allegation sent on 23 September 2014 (see A/HRC/WGEID/104/1, paras. 13-32, and A/HRC/WGEID/105/1, para. 13 and annex I). It would appreciate receiving additional information on the specific steps taken by the Government to prevent and terminate alleged cases of short-term enforced disappearance and on the measures taken to ensure that the relatives of persons deprived of their liberty are informed accurately and promptly of their detention, in accordance with article 10 (2) of the Declaration.

60. On 27 October 2014, the Working Group requested an invitation to undertake a visit to the country. The Working Group hopes that a positive reply will be received soon.

Bangladesh

61. The Working Group regrets that no information has been received from the Government in connection with a general allegation transmitted on 4 May 2011, concerning the alleged frequent use of enforced disappearance as a tool by law enforcement agencies, paramilitary and armed forces to detain and even extrajudicially execute individuals (see A/HRC/22/45 and Corr.1, para. 33).

62. On 12 March 2013, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of a reminder sent on 28 October 2014. The Working Group hopes that a positive reply will be received soon.

Bosnia and Herzegovina

63. In relation to the press release issued on 19 November 2014 (A/HRC/WGEID/105/1, para. 18), the Working Group reminds the Government that, according to the Declaration, persons accused of committing enforced disappearances should be prosecuted, tried and, if found guilty, appropriately punished.

Brazil

64. The Working Group welcomes the release of the report of the Truth Commission, which recognizes the right to truth in the context of the grave human rights violations that occurred in the past.

Burundi

65. On 27 May 2009, the Working Group requested an invitation to undertake a visit to the country. Despite reminders sent, no response yet has been received from the Government. The Working Group hopes that a positive reply will be received soon.

Democratic People's Republic of Korea

66. The Working Group, on the basis of the recommendation of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (see A/HRC/28/71, para. 67), decided to request an invitation to undertake a visit to the country. The Working Group hopes that a positive reply will be received soon.

Egypt

67. The Working Group thanks the Government for the high number of replies which demonstrate the Government's commitment to engage with the Working Group and allowed it to clarify some cases. It is however concerned that, during the reporting period, it transmitted 66 reported cases of enforced disappearances under the urgent action procedure to the Government (see A/HRC/WGEID/104/1, para. 53; A/HRC/WGEID/105/1, para. 45; A/HRC/WGEID/106/1, paras. 25 ff.) in relation to what seems to be a recent pattern of short-term disappearances. It reiterates that, as provided in article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances, and that accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (art. 10 (2) of the Declaration).

68. On 30 June 2011, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

El Salvador

69. With reference to a general allegation and a follow-up thereon transmitted to the Government (see A/HRC/WGEID/105/1, paras. 52-57, and A/HRC/WGEID/106/1, paras. 39 ff.) the Working Group encourages the Government to intensify its efforts to ensure

truth and justice as well as adequate reparation to victims, in accordance with article 13 (1) of the Declaration.

70. The Working Group also invites the Government to look into the allegations of new modalities of current forms of disappearances and to support relatives and victims in this regard.

Gambia

71. The Working Group is concerned that, during the reporting period, it transmitted to the Government seven cases under its urgent action procedure (see A/HRC/WGEID/105/1, para. 58). No response was received thereto. The Working Group recalls articles 7 ("no circumstances whatsoever ... may be invoked to justify enforced disappearances") and 10 ("accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information") of the Declaration.

Guatemala

72. The Working Group thanks the Government for the substantive reply dated 16 January 2015 to the communication transmitted on 22 December 2014 (see A/HRC/WGEID/105/1, paras. 61 and 62 and annex II) concerning the allegations of a possible application of amnesty for the former Head of State José Efraín Ríos Montt on charges of genocide and crimes against humanity. In this respect, the Working Group emphasizes the important of truth and justice for victims reiterating its previous observation (see A/HRC/27/49, para. 77) that they are both fundamental elements both for reparation for the victims and to ensure the non-recurrence of the heinous crimes that characterized the civil war, including enforced disappearances.

India

73. The Working Group regrets that it has not received a reply to a letter, transmitted jointly with two other special procedures mandate holders on 23 January 2015, concerning the allegations of continuing construction work on the site of a newly discovered mass grave (see A/HRC/WGEID/105/1, para. 66). The Working Group emphasized the importance of preserving mass grave sites, including ensuring that an effective criminal and forensic investigation can take place, and to take appropriate measures to assist victims to achieve truth and justice.

74. On 16 August 2010, the Working Group requested an invitation to undertake a visit to the country. No positive response has been received yet in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Iraq

75. The Working Group regrets that it has not received during the reporting period any information regarding the outstanding cases, including the seven individuals abducted in September 2013 (see A/HRC/27/49, para. 80).

Kenya

76. The Working Group is concerned at the lack of replies from the Government to its communications, including a general allegation transmitted on 30 September 2014 in relation to enforced disappearances and other human rights violations reportedly carried out by the Anti-Terrorism Police Unit (see A/HRC/WGEID/104/1, paras. 71-78). It recalls Human Rights Council resolution 21/4, in which the Council urges States to cooperate with the Working Group to help it to carry out its mandate effectively. The Working Group reiterates that, as provided in article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances.

77. On 19 February 2013, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of a reminder sent on 28 October 2014. The Working Group hopes that a positive reply will be received soon.

Mexico

78. The follow-up report on the implementation of the recommendations made by the Working Group after its visit to Mexico in 2011 (see A/HRC/19/58/Add.2) can be found in document A/HRC/30/38/Add.4. The Working Group thanks the Government of Mexico for its cooperation throughout the process and hopes that the recommendations contained therein will be duly implemented.

Morocco

79. The Working Group reiterates the observations contained in the previous annual report (A/HRC/27/49, para. 86) on the importance to ensure the right to truth for the families of victims, including a full and independent investigation into the allegations of enforced disappearances. In this respect, the Working Group recommends the Government to take in adequate account all the information available on enforced disappearances, including that of forensic experts. It also recalls article 13, paragraph 4, of the Declaration, which provides that the findings of investigation on cases of enforced disappearances shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

Pakistan

80. The Working Group is concerned that, during the reporting period, it transmitted to the Government 57 new cases under its urgent action procedure (see A/HRC/WGEID/104/1, para. 93; A/HRC/WGEID/105/1, para. 96; A/HRC/WGEID/106/1, para. 58). It reiterates that, as provided in article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances, and that accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (art. 10 (2) of the Declaration). The Working Group thanks the Government for the reply dated 6 May 2015 providing information on a high number of cases and reiterating the Government's commitment to remain engaged with the Working Group. The reply will be considered in detail at next session of the Working Group.

Paraguay

81. In relation to the general allegation of 7 October 2014 (see A/HRC/WGEID/104/1, paras. 97-107), while the Working Group appreciates the reply received on 7 January 2015 (see A/HRC/WGEID/105/1, paras. 111-115), it considers that more efforts should be made to establish the fate and whereabouts of the disappeared persons and to identify the bodies.

Russian Federation

82. On 2 November 2006, the Working Group requested an invitation to undertake a visit to the country. No positive response has been received yet in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Rwanda

83. On 27 October 2014, the Working Group requested an invitation to undertake a visit to the country. The Working Group hopes that a positive reply will be received soon.

Spain

84. The Working Group reminds the Government of its obligation to either investigate cases of enforced disappearances or, alternatively, cooperate with other countries who want to investigate and prosecute these cases, including by extraditing suspects present in its territory (see A/HRC/WGEID/106/1, para. 68). The Working Group emphasizes that, in accordance with article 17 of the Declaration, acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

Sri Lanka

85. The Working Group appreciates the invitation received from the Government to visit Sri Lanka from 3 to 12 August 2015. It notes however that, on 17 July 2015, the Government has requested a postponement of the visit in the light of the proximity of the dates scheduled for the visit with the Parliamentary elections. The Working Group notes the commitment expressed by the Government to ensure that the visit can take place at a mutually agreed date before the end of 2015.

Syrian Arab Republic

86. The Working Group continues to be gravely concerned about the situation in the Syrian Arab Republic, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

87. On 19 September 2011, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Thailand

88. With reference to its previous observations on the matter (see A/HRC/WGEID/104/1, para. 140), the Working Group emphasizes that democratic order and the rule of law are essential elements to prevent the occurrence of enforced disappearances.

89. On 30 June 2011, the Working Group requested an invitation to undertake a visit to the country. No positive response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Timor-Leste

90. The follow-up report on the implementation of the recommendations made by the Working Group after its visit to Timor-Leste in 2011 (A/HRC/19/58/Add.1) can be found in document A/HRC/30/38/Add.4. The Working Group regrets that the Government of Timor-Leste did not cooperate with the Working Group in the process of producing the follow-up report. It hopes that the recommendations contained in the report will be duly implemented.

Turkey

91. The Working Group appreciates the invitation received from the Government to visit Turkey in November 2015 and looks forward to the visit.

United Arab Emirates

92. On 13 September 2013, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of a reminder sent on 27 October 2014. The Working Group hopes that a positive reply will be received soon.

Ukraine

93. The Working Group continues to be gravely concerned about the situation in Ukraine, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

Uruguay

94. The Working Group encourages the Government of Uruguay to deepen and strengthen the efforts to secure the right to truth and justice for enforced disappearances, in accordance with international standards.

Yemen

95. The Working Group is concerned about the deteriorating situation in Yemen, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the

Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

V. Conclusions and recommendations

96. **The Working Group finalized its study on enforced or involuntary disappearances and economic, social and cultural rights, which is presented as an addendum to this report (see paras. 52-55 above). It will continue to conduct studies on thematic issues of relevance to its mandate and has decided to conduct the next one on enforced disappearances in the context of migration.**

97. **Sadly, enforced disappearances are not a crime of the past but continue to be used across the world with the false and pernicious belief that they are a useful tool to preserve national security and combat terrorism or organized crime.**

98. **During the reporting period, the Working Group transmitted 384 newly reported cases of disappearance to 33 States. It used the urgent action procedure in 151 of those cases, which allegedly occurred within the three months preceding the receipt of the report by the Working Group.**

99. **The year 2015 marked the thirty-fifth anniversary of the creation of the Working Group. The Working Group is grateful to the Government of Argentina for its invitation to hold the 105th session of the Working Group in Argentina, from 2 to 6 March 2015, in a former secret detention centre, to symbolically mark that date. Much has been achieved during those 35 years to bring truth and justice to victims, although it is still too little vis-à-vis the suffering of all relatives who are still searching for their loved ones. During the reporting period, the Working Group was only able to clarify 65 cases of enforced disappearance. More than 43,000 cases still remain unclarified, many dating back decades. Cases remain outstanding with the Working Group for a number of reasons, notably for the lack of sufficient State willingness, capacity and/or efforts to establish the fate and whereabouts of the disappeared. States should urgently take into account the sufferings of the families and strengthen their efforts to search for the disappeared persons. The Working Group emphasized in that respect the importance of expanding the use of forensic expertise and DNA testing.**

100. **In spite of the large number of cases, underreporting remains a major problem, and is due to various reasons, including fear of reprisals, weak administration of justice, ineffectual reporting channels, institutionalized systems of impunity, poverty, illiteracy, language barriers, a practice of silence and restrictions on the work of civil society. More assistance should be provided to family members and members of civil society to enable them to report cases to the Working Group and more importantly to keep working on enforced disappearance issues.**

101. **The Working Group cannot discharge its mandate without the cooperation of States, particularly in providing information to the families about the fate or whereabouts of disappeared persons. In that respect, the Working Group remains concerned that, of the 84 States with outstanding cases, a significant number have never replied to the Working Group or have provided responses that do not contain any relevant information. The Working Group urges all States to fulfil their obligations under the Declaration and the relevant resolutions of the General Assembly and the Human Rights Council to properly investigate cases of enforced disappearances and to cooperate with the Working Group.**

102. During the reporting period, the Working Group continued to observe a pattern of "short-term" enforced disappearances being used in a number of countries. The Working Group expresses its deep concern at the phenomenon. It stresses that there is no time limit, no matter how short, for an enforced disappearance to occur and that accurate information on the detention of any person deprived of liberty and their place of detention shall be made promptly available to their family members.

103. The Working Group is also concerned about the deteriorating situation in a number of countries, as reflected in the present report. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

104. The Working Group continues to note a pattern of threats, intimidation and reprisals against victims of enforced disappearance, including family members, witnesses and human rights defenders working on such cases. It calls upon States to take specific measures to prevent such acts, protect those working on cases of enforced disappearances and punish the perpetrators, in accordance with article 13 (1) and (3) of the Declaration. The Working Group reiterates its support for the establishment of a United Nations-wide senior focal point to engage with all stakeholders, in particular Member States, to promote the prevention of, protection against and accountability for reprisals and intimidation related to cooperation with the United Nations, its representatives and mechanisms (see A/HRC/27/49, para. 119). It regrets that no progress has been made on that matter during the reporting period.

105. Country visits are an integral part of the mandate fulfilled by the Working Group. Visits allow the Working Group to highlight country practices in addressing enforced disappearance, to assist States in reducing obstacles to implement the Declaration and to ensure direct contact with the family members of victims. The Working Group thanks the Governments of Albania, Sri Lanka, the Sudan and Turkey for the invitations extended during the reporting period. It also recognizes the support provided by the Governments of Croatia, Montenegro, Peru and Serbia during the visits carried out in the reporting period. During that period, the Working Group requested visits to Albania, Bahrain, the former Yugoslav Republic of Macedonia, Rwanda and South Africa. In addition to those new requests, the Working Group has requested in the past a visit to the following countries, without having yet received a positive response: Bangladesh, Belarus, Burundi, China, Egypt, India, Indonesia, Kenya, Nepal, Nicaragua, the Philippines, the Russian Federation, South Sudan, the Syrian Arab Republic, Thailand, the United Arab Emirates, Uzbekistan and Zimbabwe. There are other countries that have invited the Working Group to visit and/or confirmed invitations, but for which specific dates to visit have not been agreed, such as Algeria and the Islamic Republic of Iran. The Working Group therefore calls upon all States with pending requests for visits to respond favourably to them in the light of Human Rights Council resolution 21/4, and those that have agreed to visits to respond as soon as possible with specific dates.

106. The Working Group once again calls upon States that have not signed and/or ratified the International Convention for the Protection of All Persons from Enforced Disappearance to do so as soon as possible and to accept the competence of the Committee on Enforced Disappearances to receive individual cases under article 31, and inter-State complaints under article 32 of the Convention.

107. The Working Group is concerned about increasing instances of abductions carried out by non-State actors, which may be tantamount of acts of enforced disappearances. The Working Group has decided to continue paying attention to and studying the question of disappearances carried out by non-State actors in order to

determine if those situations fall under its mandate and, if so, what actions should be taken. The Working Group calls on all relevant stakeholders to take appropriate measures in relation to this issue and to provide information to, and share their views on this matter with, the Working Group.

108. **The Working Group is grateful to the Human Rights Council and the General Assembly for the recognition, through the granting of an additional post under the regular budget, of its need to receive additional support, given its huge workload and variety of activities. It is also thankful for the continuous support, including through voluntary contributions, provided by donor States, notably Argentina, France and Japan The Working Group calls on all States for greater assistance to allow it to better accomplish its mandate.**

109. **The obligations to prevent and eradicate enforced disappearance and to secure the right to truth, justice and reparation of victims remain the same although there are changing circumstances in which enforced disappearances occur or in which public policies are developed. Thus new strategies to counter this heinous crime are needed and the Working Group urges States to adopt and/or strengthen measures as to fulfil the obligations laid out in the Declaration.**

Annex I

[English only]

Country visit requests and invitations extended

Invitations extended to the WGEID

Country	*Date*
Albania	tbd
Algeria[1]	tbd
Ecuador	tbd
Iran (Islamic Republic of)[2]	tbd
Kyrgyzstan	tbd
Libya	tbd. postponed
Sri Lanka	3-12 August 2015 (postponed)
Sudan	tbd
Turkey	16-20 November 2015
Tajikistan	tbd

Visits requested by the WGEID

Country	*Request sent*	*Last reminder sent*
Bahrain	27 October 2014	28 October 2014
Bangladesh	12 March 2013	28 October 2014
Belarus	30 June 2011	28 October 2014
Burundi	27 May 2009	27 October 2014
China	19 February 2013	28 October 2014
Egypt	30 June 2011	27 October 2014
India	16 August 2010	28 October 2014
Indonesia	12 December 2006	28 October 2014
Kenya	19 February 2013	28 October 2014
Nepal	12 May 2006	27 October 2014
Nicaragua	23 May 2006	27 October 2014

[1] Please refer to para. 58 of the current document.
[2] Please refer to para. 33 of the current document.

Visits requested by the WGEID

Country	*Request sent*	*Last reminder sent*
Philippines	3 April 2013	28 October 2014
Russian Federation	2 November 2006	28 October 2014
Rwanda	27 October 2014	28 October 2014
South Africa	28 October 2014	28 October 2014
South Sudan	29 August 2011	28 October 2014
Syrian Arab Republic	19 September 2011	27 October 2014
Thailand	30 June 2011	28 October 2014
The former Yugoslav Republic of Macedonia	27 October 2014	27 October 2014
United Arab Emirates	13 September 2013	27 October 2014
Uzbekistan	30 June 2011	28 October 2014
Zimbabwe	20 July 2009	28 October 2014

Annex II

[English only]

Statistical summary: cases of enforced or involuntary disappearance reported to the Working Group between 1980 and 2015, and general allegations transmitted

	Cases transmitted to the Government				*Cases clarified by*		*Status of person at date of clarification*					*General Allegation*	
	Outstanding cases		*Total*										
States entities	*Cases*	*Female*	*Cases*	*Female*	*Government*	*Sources*	*At liberty*	*In detention*	*Dead*	*Discontinued cases*	*Closed cases*	*GA sent*	*Response*
Afghanistan	3	-	3	-	-	-	-	-	-	-	-	-	-
Albania	1	-	1	-	-	-	-	-	-	-	-	-	-
Algeria	3 104	20	3 132	21	9	20	11	10	8	-	-	Yes (2013)	Yes
Angola	2	-	12	1	7	-	-	-	7	3	-	-	-
Argentina[1]	3 271	735	3 449	774	124	52	30	5	141	-	-	-	-
Bahrain	3	-	12	-	2	7	2	7	-	-	-	Yes (2014)	Yes
Bangladesh	30	1	31	2	1	-	1	-	-	-	-	Yes (2011)	No
Belarus	3	-	3	-	-	-	-	-	-	-	-	-	-
Bhutan	5	-	5	-	-	-	-	-	-	-	-	-	-
Bolivia (Plurinational State of)	28	3	48	3	19	1	19	-	1	-	-	-	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	Yes (2009, 2011/2014)	Yes
Brazil	13	-	63	4	46	4	1	-	49	-	-	-	-
Bulgaria	-	-	3	-	3	-	-	-	3	-	-		
Burkina Faso	-	-		-	3	-	-	-	3	-	-		
Burundi	52	-	53	-	-	1	1	-	-	-	-	-	-
Cambodia	1	-	3	-	-	-	-	-	-	2	-		

[1] The Working Group determined that one case was a duplicate and subsequently deleted it from its records.

States entities	Cases transmitted to the Government				Cases clarified by		Status of person at date of clarification					General Allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	GA sent	Response
Cameroon	14	-	19	-	5	-	4	1	-	-	-	-	-
Central African Republic	3	-	3	-	-	-	-	-	-	-	-	Yes (2013)	No
Chad	23	-	34	-	3	8	9	1	1	-	-	-	-
Chile	786	63	908	65	98	23	2	-	119	-	-	-	-
China	40	10	132	21	77	15	55	35	2	-	-	Yes (2010/2011)	Yes
Colombia	971	96	1 258	126	219	68	160	24	103	-	-	Yes (2012/ 2013/2015)	Yes
Congo	89	3	115	3	-	-	-	-	-	-	-	-	-
Cuba	0	0	1	0	1	-	-	1	-	-	-	-	-
Czech Republic	-	-	-	-	-	-	-	-	-	-	-	Yes (2009)	Yes
Democratic People's Republic of Korea	53	10	53	10	-	-	-	-	-	-	-	Yes (2012)	No
Democratic Republic of the Congo	47	11	56	11	6	3	9	-	-	-	-	Yes (2015)	No
Denmark	-	-	1	-	-	1	-	1	-	-	-	Yes (2009)	No
Dominican Republic	2	-	5	-	2	-	2	-	-	1	-	-	-
Ecuador	5	-	27	2	18	4	12	4	6	-	-	-	-
Egypt[2]	124	1	159	2	11	24	5	30	-	-	-	Yes (2011)	Yes
El Salvador	2 280	296	2 671	333	318	73	196	175	20	-	-	Yes (2015[3])	No
Equatorial Guinea	8	-	8	-	-	-	-	-	-	-	-	-	-
Eritrea	56	4	56	4	-	-	-	-	-	-	-	Yes (2012)	No
Ethiopia	112	1	119	2	3	4	2	5	-	-	-	-	-
France	1	-	1	-	-	-	-	-	-	-	-	-	-
Gambia	7	2	11	2	-	4	4	-	-	-	-	-	-

[2] The Working Group determined that one case was a duplicate and subsequently deleted it from its records.

[3] The Working Group transmitted one General Allegation and a follow-up General Allegation to El Salvador in 2015.

States entities	Cases transmitted to the Government				Cases clarified by:		Status of person at date of clarification					General Allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	GA sent	Response
Georgia	0	-	1	-	1	-	-	-	1	-	-	-	-
Greece	1	-	3	-	-	-	-	-	-	2	-	-	-
Guatemala[4]	2 897	372	3 154	390	177	80	187	6	64	-	-	Yes (2011/2013)	Yes
Guinea	37	2	44	2	-	7	-	-	7	-	-	-	-
Haiti	38	1	48	1	9	1	1	4	5	-	-	-	-
Honduras	130	21	210	34	37	43	54	8	18	-	-	-	-
India	354	11	434	13	68	12	51	7	22	-	-	Yes (2009/ 2011/2013)	No
Indonesia	163	3	166	3	3	-	3	-	-	-	-	Yes (2011/2013)	No
Iran (Islamic Republic of)	522	102	541	103	14	5	8	2	9	-	-	-	-
Iraq	16 408	2 300	16 555	2 317	117	30	122	16	9	-	-	-	-
Ireland	-	-	-	-	-	-	-	-	-	-	-	Yes (2009)	No
Israel	2	-	3	-	-	1	-	-	-	-	-	-	-
Japan	-	-	4	3	-	-	-	-	-	-	-	-	-
Jordan	3	-	3	-	-	-	-	-	-	-	-	-	-
Kazakhstan	-	-	2	-	-	2	-	-	-	-	-	-	-
Kenya	61	-	61	-	-	-	-	-	-	-	-	Yes (2011/2014)	No
Kuwait	1	-	1	-	-	-	-	-	-	-	-	-	-
Lao People's Democratic Republic	2	1	8	1	-	5	-	4	1	1	-	-	-
Lebanon	313	19	321	19	2	6	7	1	-	-	-	-	-
Libya	10	1	18	1	-	8	6	2	-	-	-	Yes (2014)	No
Lithuania	-	-	-	-	-	-	-	-	-	-	-	Yes (2012)	Yes

[4] The Working Group determined that one case is a duplicate and subsequently deleted it from its records.

States entities	Cases transmitted to the Government				Cases clarified by		Status of person at date of clarification					General Allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	GA sent	Response
Malaysia	-	-	2	-	-	1	-	1	-	1	-	-	-
Mauritania	4	-	4	-	-	-	-	-	-	-	-	-	-
Mexico	366	33	545	43	134	29	77	18	68	16	-	Yes (2013/2014)	No
Montenegro	-	-	16	1	1	-	-	1	-	14	1	-	-
Morocco	86	8	320	30	160	52	142	16	55	21	-	Yes (2013)	Yes
Mozambique	2	-	2	-	-	-	-	-	-	-	-	-	-
Myanmar	2	1	9	6	7	-	5	2	-	-	-	-	-
Namibia	2	-	3	-	-	1	1	-	-	-	-	-	-
Nepal	459	56	673	72	135	79	153	60	1	-	-	Yes (2014)	No
Nicaragua	103	2	234	4	112	19	45	11	75	-	-	-	-
Nigeria	-	-	6	-	6	-	6	-	-	-	-	-	-
Oman	1	-	2	-	-	1	1	-	-	-	-	-	-
Pakistan	200	2	267	2	42	24	39	17	10	-	-	Yes (2015)	Yes[5]
Paraguay	-	-	23	-	20	-	19	-	1	3	-	Yes (2014)	Yes
Peru[6]	2 365	236	3 006	311	253	388	450	85	106	-	-	-	-
Philippines	625	74	786	94	126	35	108	19	29	-	-	Yes (2009/2012)	No
Romania	-	-	1	-	1	-	1	-	-	-	-	-	-
Russian Federation	476	25	488	27	2	10	12	-	-	-	-	-	-
Rwanda	22	2	25	2	-	2	1	1	-	1	-	-	-
Saudi Arabia	5	-	15	-	4	4	3	4	1	2	-	-	-
Senegal	1	-	1	-	-	-	-	-	-	-	-	-	-
Serbia	-	-	1	-	1	-	1	-	-	-	-	-	-

[5] The Working Group received a reply to the General Allegation from the Government of Pakistan during its 106th session. The content of the reply will be reviewed during the 107th session of the Working Group.

[6] The Working Group determined that two cases are duplicates and subsequently deleted them from its records.

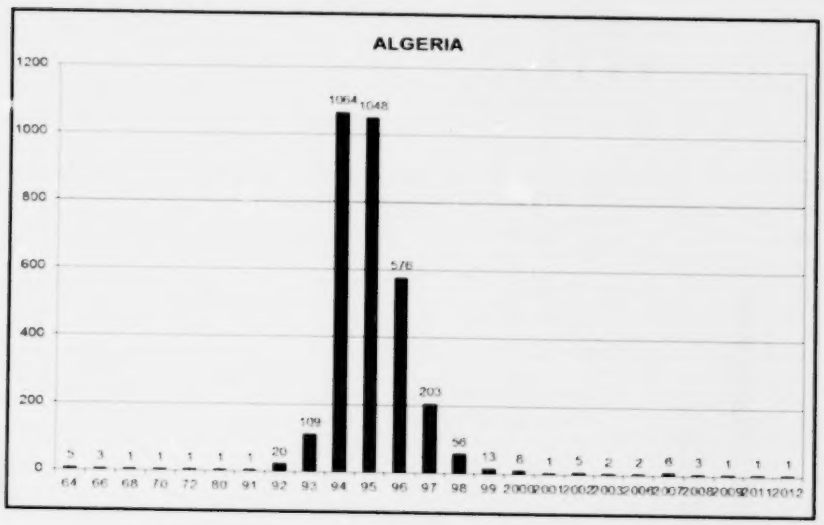
States entities	Cases transmitted to the Government				Cases clarified by:		Status of person at date of clarification					General Allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	GA sent	Response
Seychelles	3	-	3	-	-	-	-	-	-	-	-	-	-
Somalia	1	-	1	-	-	-	-	-	-	-	-	-	-
South Africa	1	1	12	2	3	2	1	1	3	6	-		
South Sudan	1	-	1	-	-	-	-	-	-	-	-	-	-
Spain	6	-	8	-	2	-	-	-	2	-	-	Yes (2014)	Yes
Sri Lanka	5 750	100	12341	170	6 551	40	118	27	6 446	-	-	Yes (2011/2014)	Yes
Sudan	173	5	383	37	205	4	209	-	-	-	-	-	-
Switzerland	0	-	1	-	1	-	-	1	-	-	-	-	-
Syrian Arab Republic	130	11	186	12	15	41	30	20	6	-	-	Yes (2) (2011)	Yes
Tajikistan	3	-	10	-	5	2	1	-	6	-	-	-	-
Thailand	82	8	90	8	2	-	1	1	-	2	-	Yes	No
The former Yugoslav Republic of Macedonia	-	-	-	-	-	-	-	-	-	-	-	Yes (2009)	No
Timor-Leste	428	28	504	36	58	18	51	23	2	-	-	-	-
Togo	10	2	11	2	-	1	1	-	-	-	-	-	-
Tunisia	2	-	19	1	12	5	1	16	-	-	-	-	-
Turkey	79	2	202	11	73	49	71	24	27	1	-	-	-
Turkmenistan	3	-	5	-	2	-	-	2	-	-	-	-	-
Uganda	15	2	22	4	2	5	2	5	-	-	-	-	-
Ukraine	5	-	7	-	2	-	1	-	1	-	-	-	-
United Arab Emirates	16	3	36	3	2	18	4	16	-	-	-	-	-
United Kingdom of Great Britain and Northern Ireland	-	-	1	-	-	-	-	-	-	-	-		
United Republic of Tanzania	-	-	2	-	2	-	2	-	-	-	-		
United States of America	-	-	1	-	1	-	-	-	-	-	-		

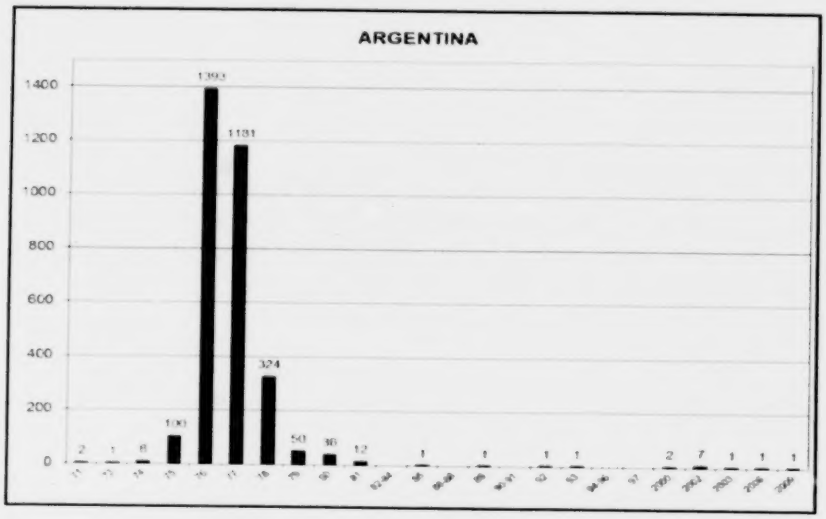
States entities	Cases transmitted to the Government				Cases clarified by		Status of person at date of clarification					General Allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	GA sent	Response
Uruguay	17	2	31	7	13	1	5	4	5	-	-	Yes (2013)	Yes
Uzbekistan	7	-	20	-	12	1	2	11	-	-	-	-	-
Venezuela (Bolivarian Republic of)	12	2	16	3	4	-	1	-	3	-	-	-	-
Viet Nam	1	-	2	-	1	-	-	-	-	-	-	-	-
Yemen	11	-	169	-	135	9	66	5	73	14	-	-	-
Zambia	-	-	1	1	-	1	-	1	-	-	-		
Zimbabwe	5	1	7	1	1	1	1	-	1	-	-	Yes (2009)	No
State of Palestine	4	1	4	1	-	-	-	-	-	-	-	-	-

Annex III

[English only]

Graphs showing the number of cases of enforced disappearances per year and per country according to the cases transmitted by the Working Group during the period 1980–15 May 2015 (only for countries with more than 100 cases transmitted)

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1200
1000
800
600
400
200
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30
12
2
1
8
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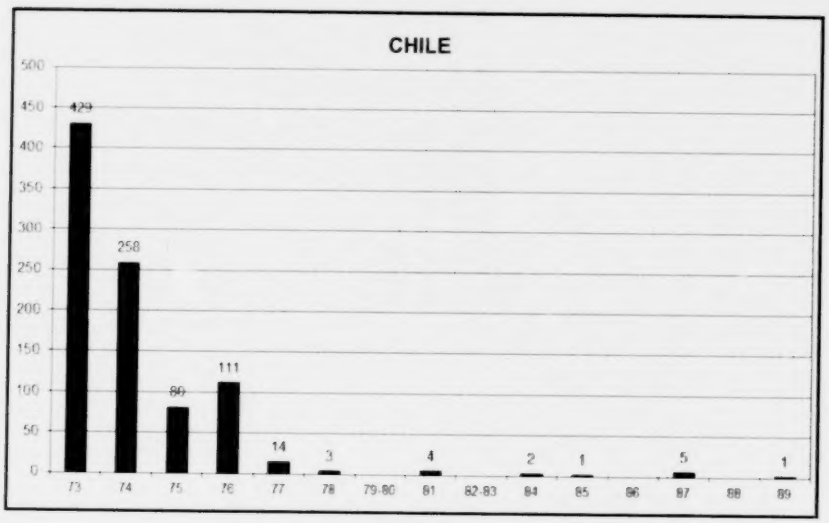
1
1
1
2
7
1
1
1


CHILE
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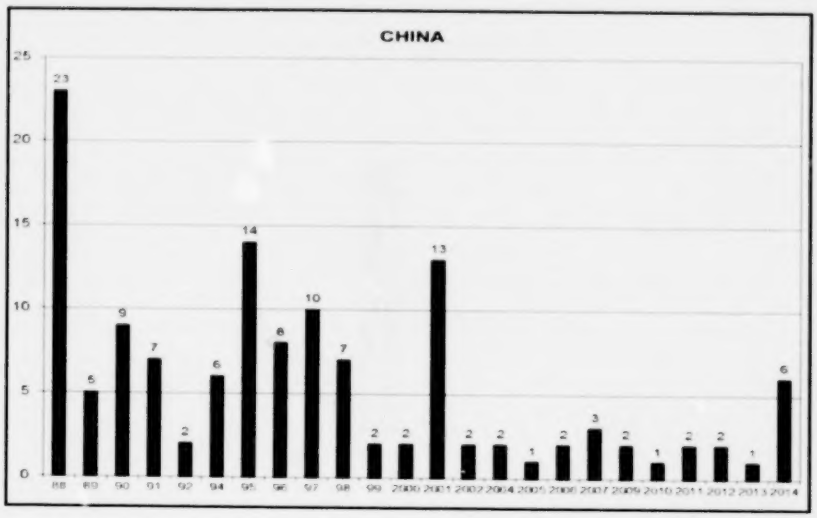
450
400
350
300
250
200
150
100
50
0
429
258
80
111
14
3
4
2
1
5
1
73
74
75
76
77
78
79-80
81
82-83
84
85
86
87
88
89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20
15
10
5
0
23
5
9
7
2
6
14
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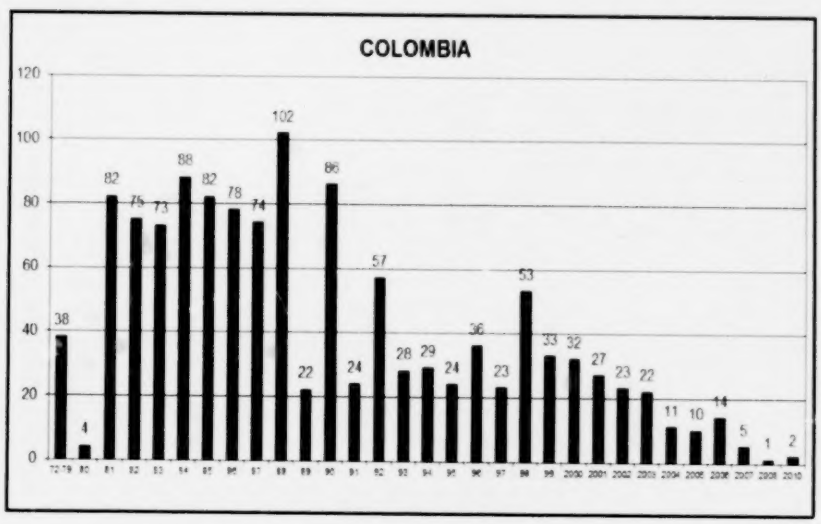
10
7
2
2
13
2
2
1
2
3
2
1
2
2
1
6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80
60
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20
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38
4
82
75
73
88
82
78
74
102
22
86
24
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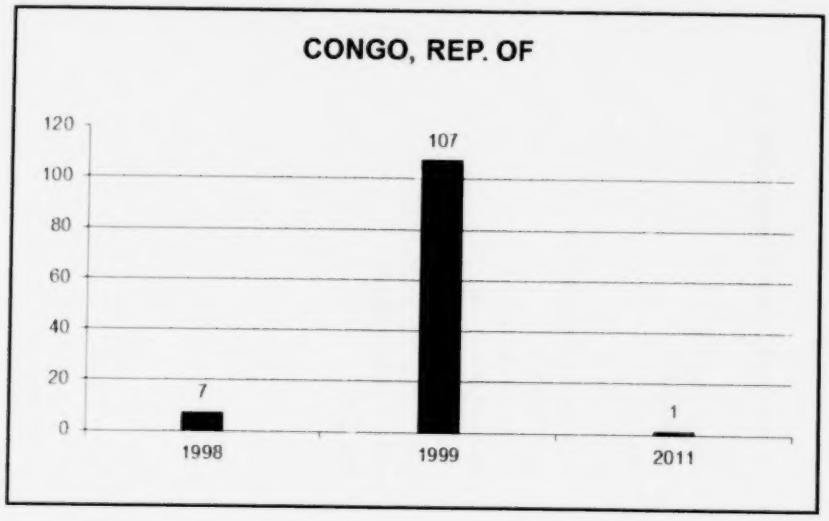
23
53
33
32
27
23
22
11
10
14
5
1
2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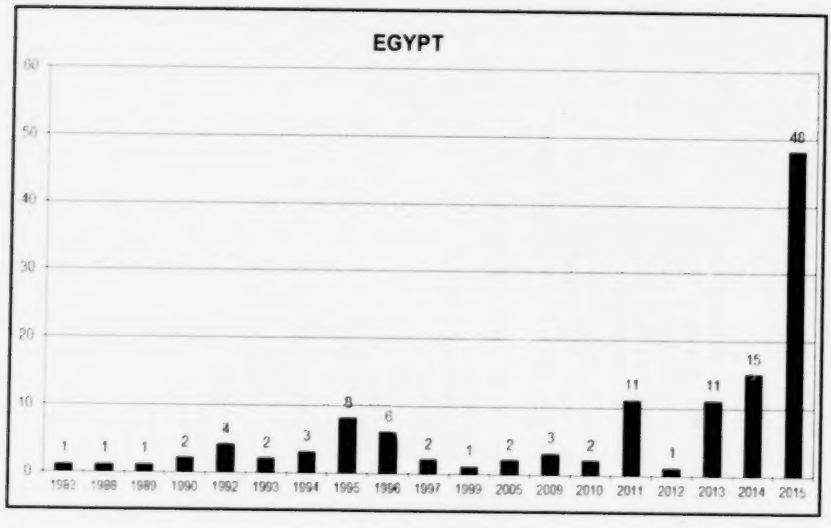
20
0
7
107
1
1998
1999
2011


EGYPT
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50
40
30
20
10
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1
1
1
2
4
2
3
8
6
2
1
2
3
2
11
1
11
15
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1992
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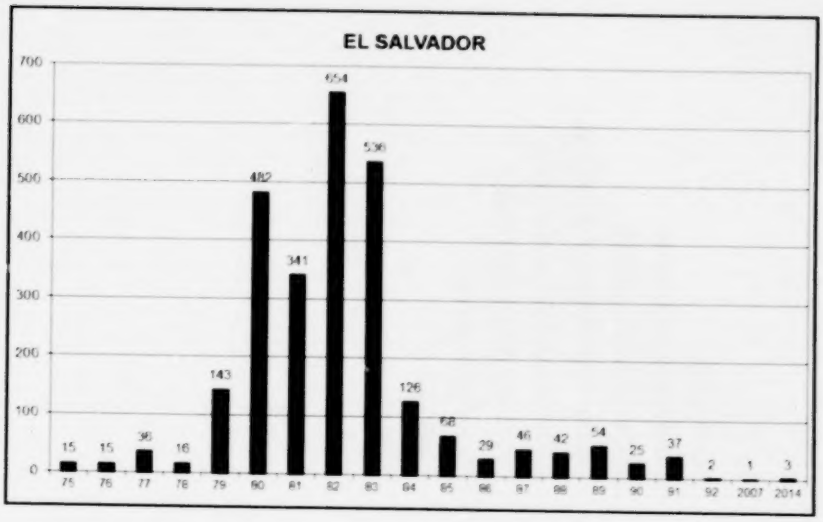
1992
1993
1994
1995
1996
1997
1999
2005
2009
2010
2011
2012
2013
2014
2015


EL SALVADOR
700
600
500
400
300
200
100
0
15
15
36
16
143
482
341
654
536
126
68
29
46
42
54
25
37
2
1
3
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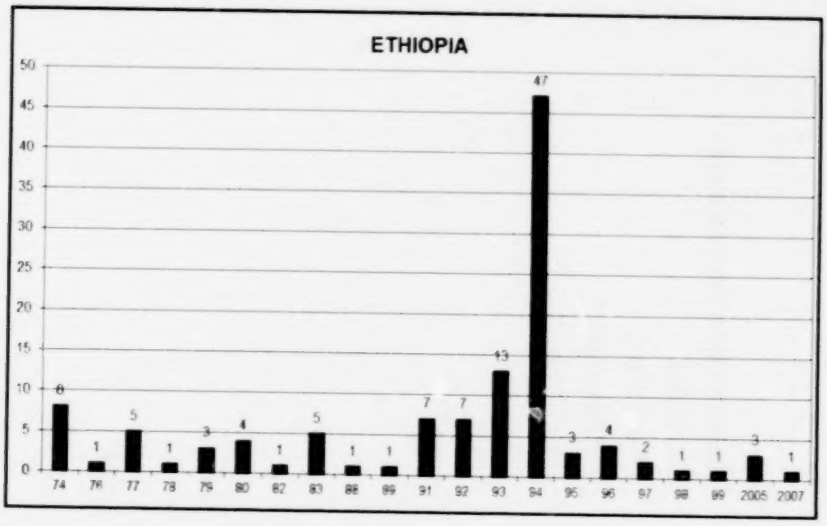
90
91
92
2007
2014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1
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7
7
13
47
3
4
2
1
1
3
1
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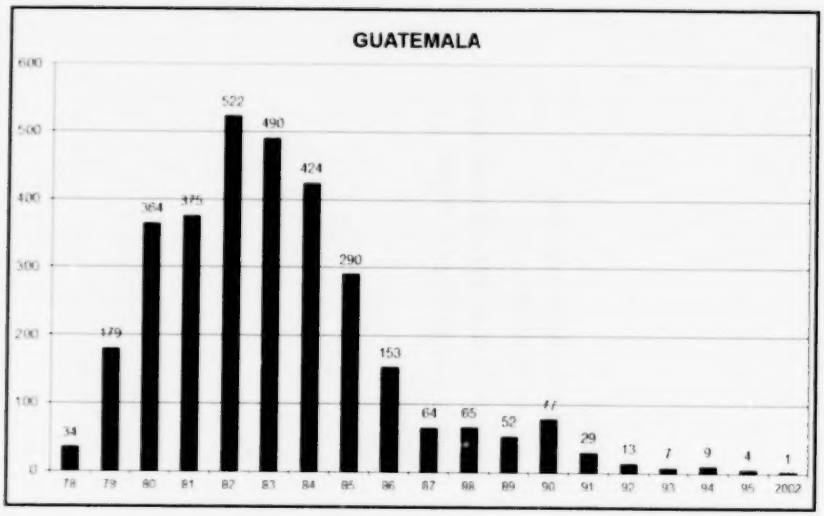
2005
2007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364
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522
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424
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65
52
77
29
13
7
9
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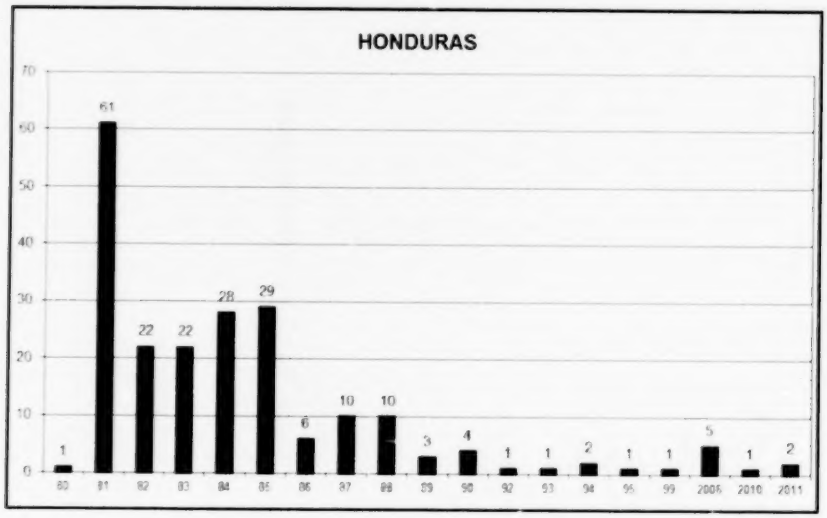
93
94
95
2002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4
1
1
2
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1
5
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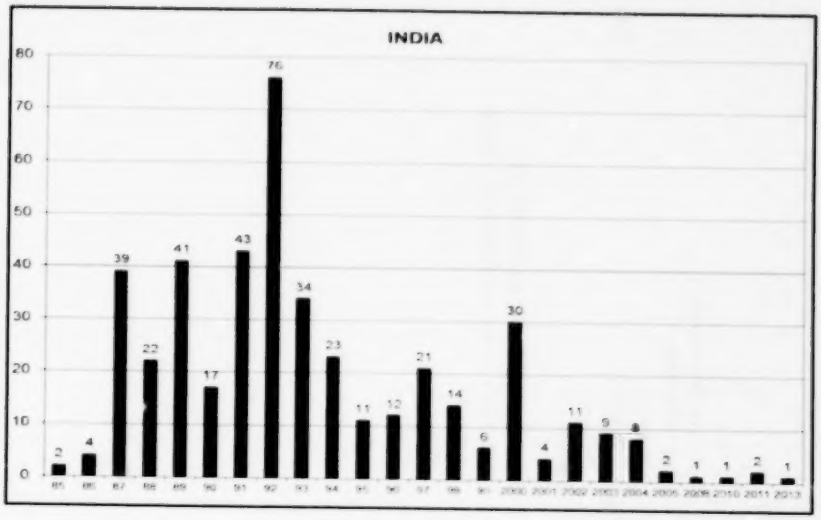
94
95
99
2005
2010
2011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39
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2
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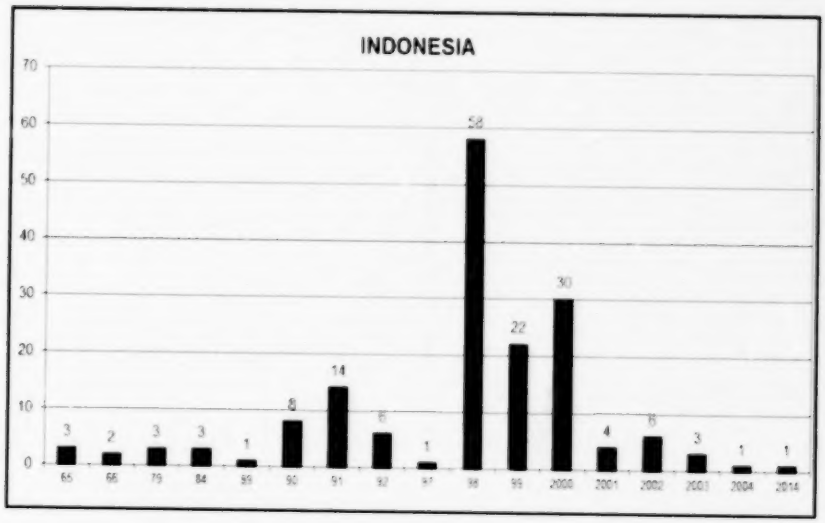
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3
2
3
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14
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58
22
30
4
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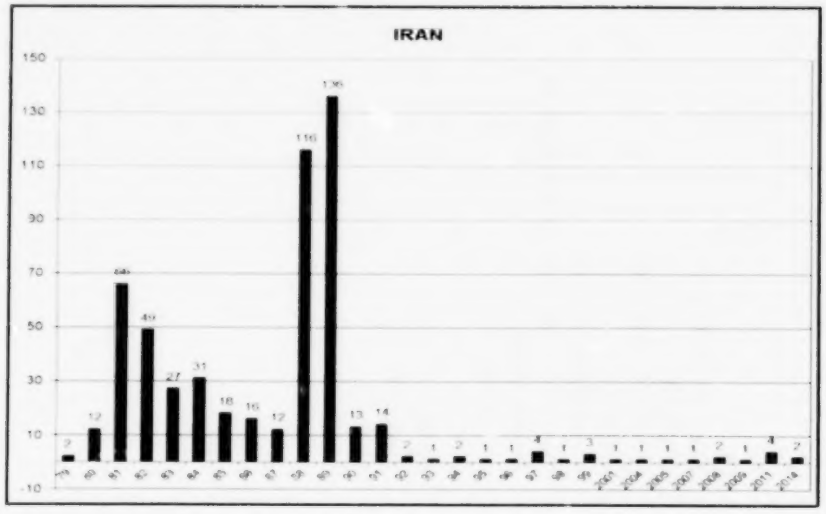
2000
2001
2002
2003
2004
2014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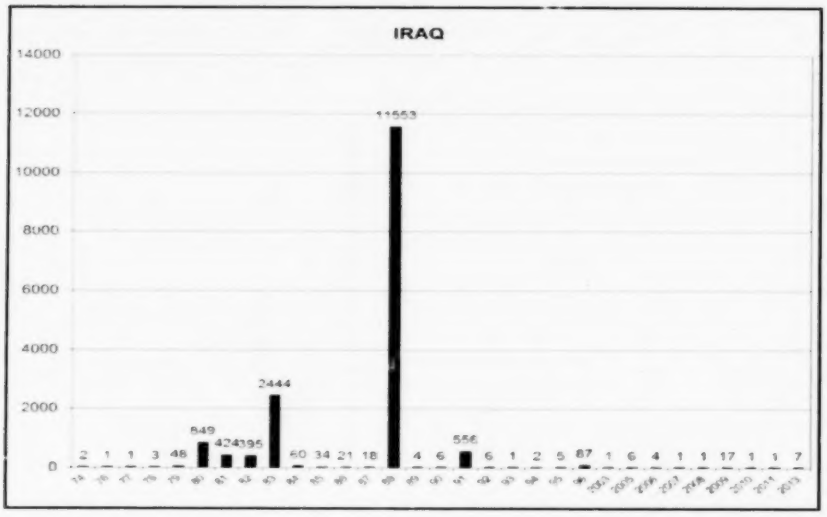
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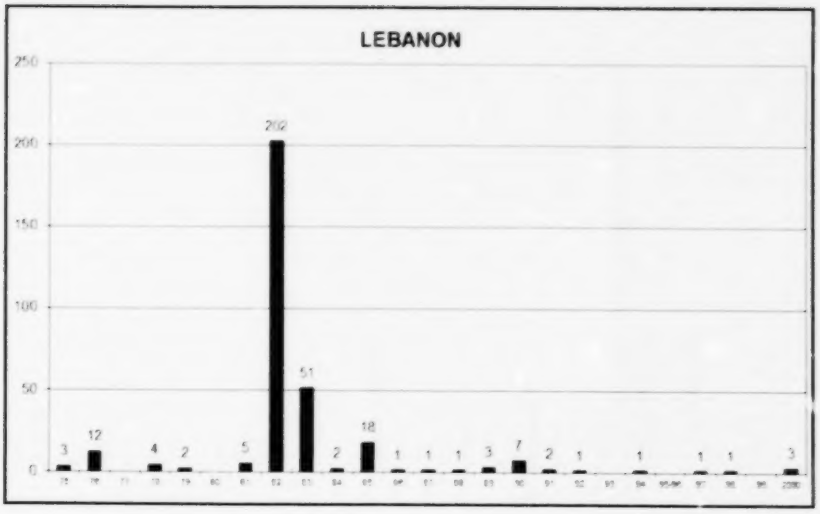
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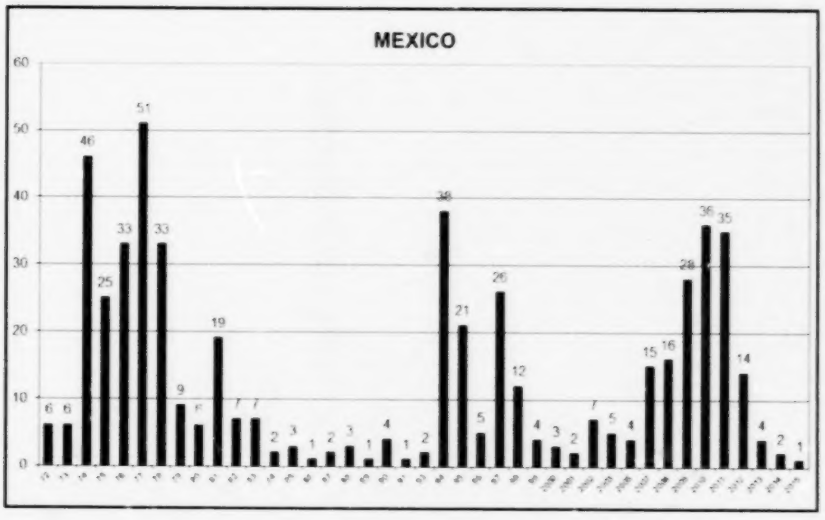
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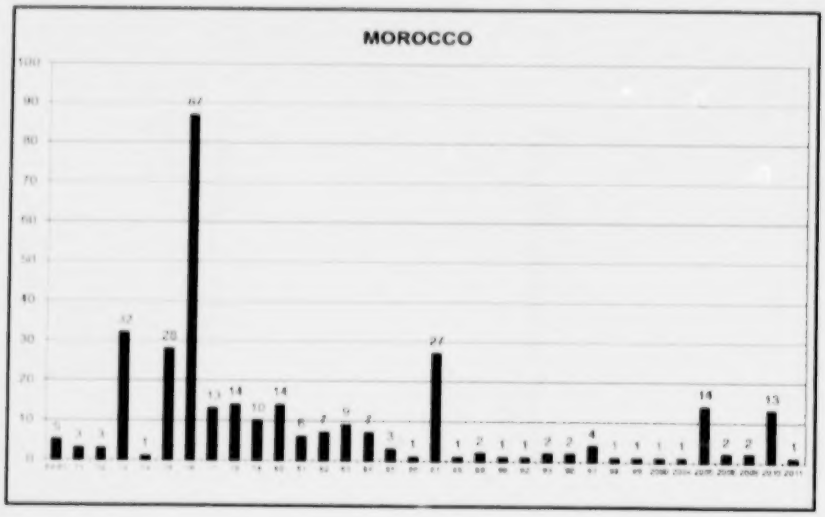
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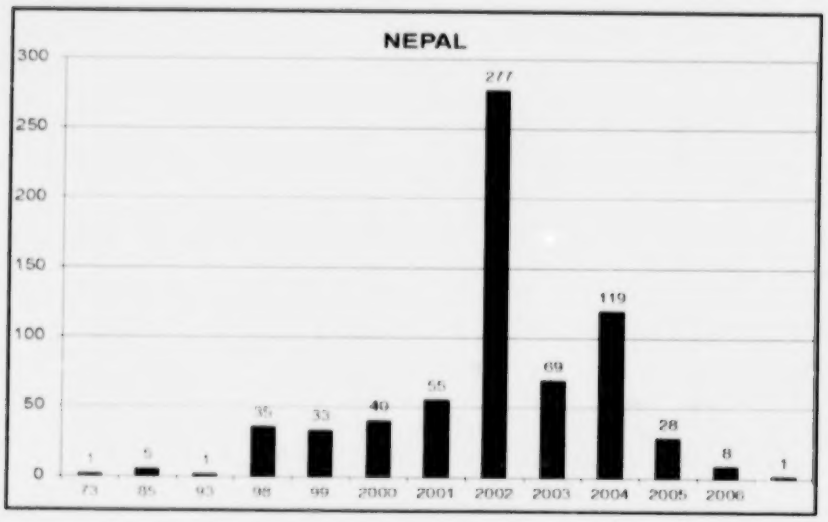
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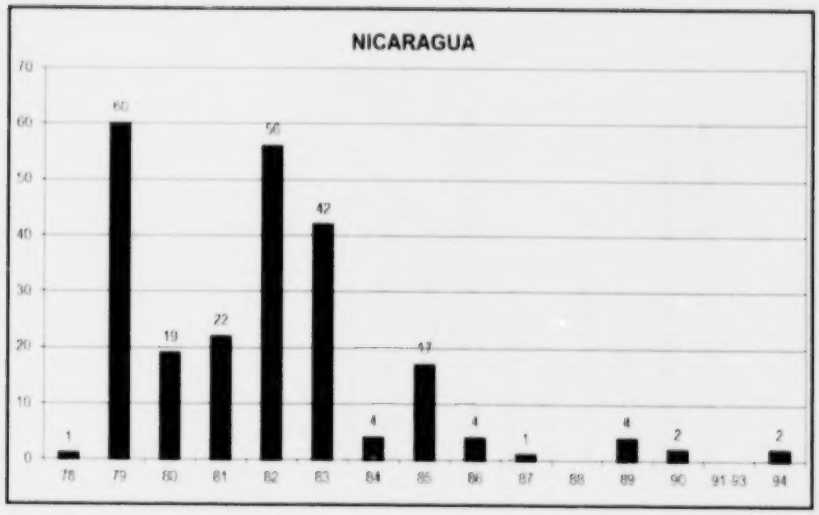
99
2000
2001
2002
2003
2004
2005
2006


NICARAGUA
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50
40
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20
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0
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60
19
22
56
42
4
17
4
1
4
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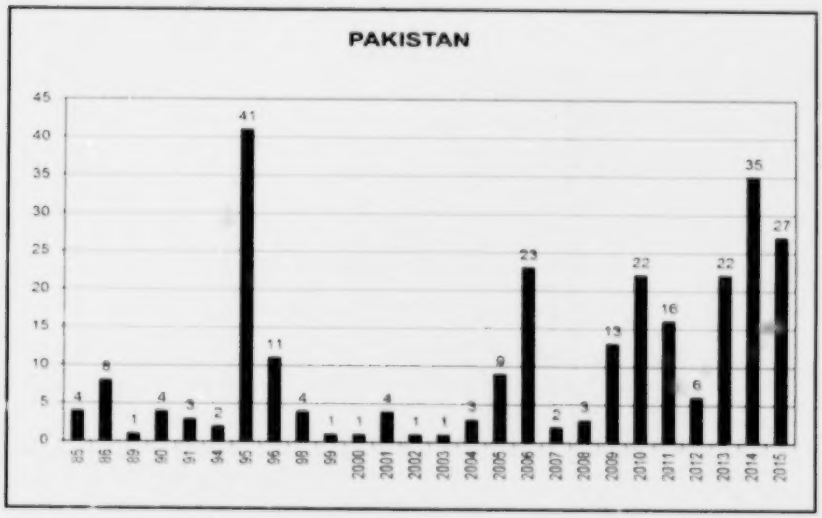
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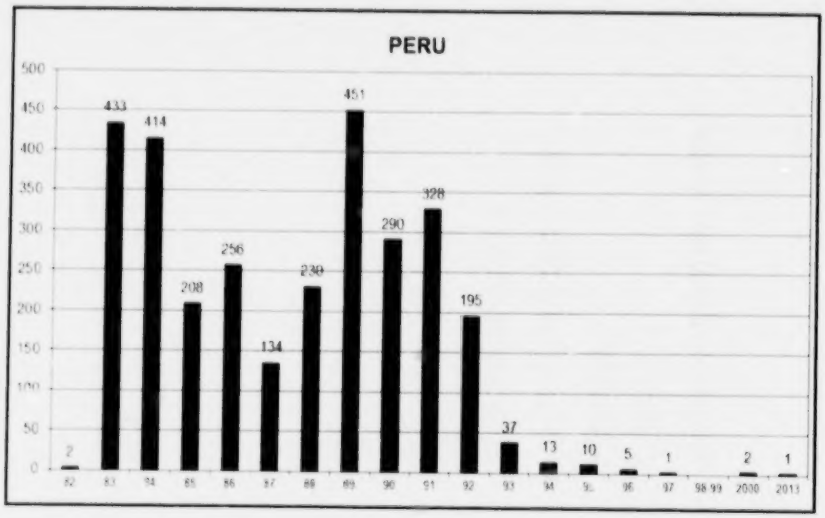
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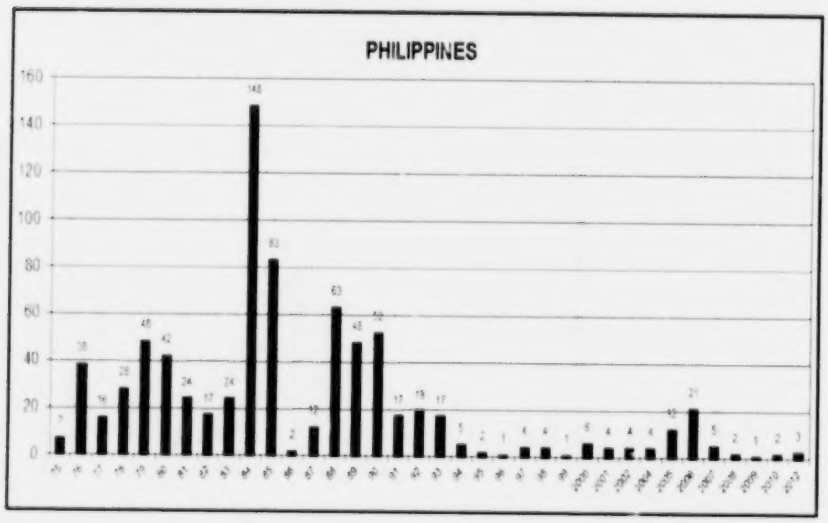
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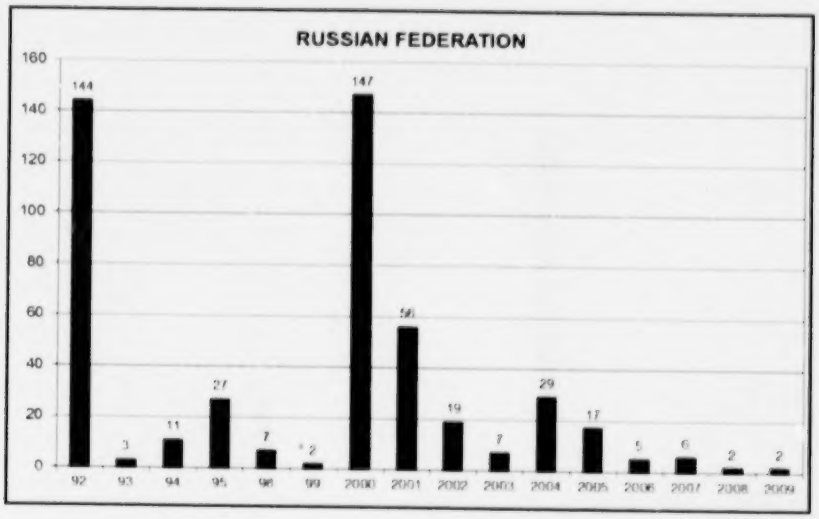
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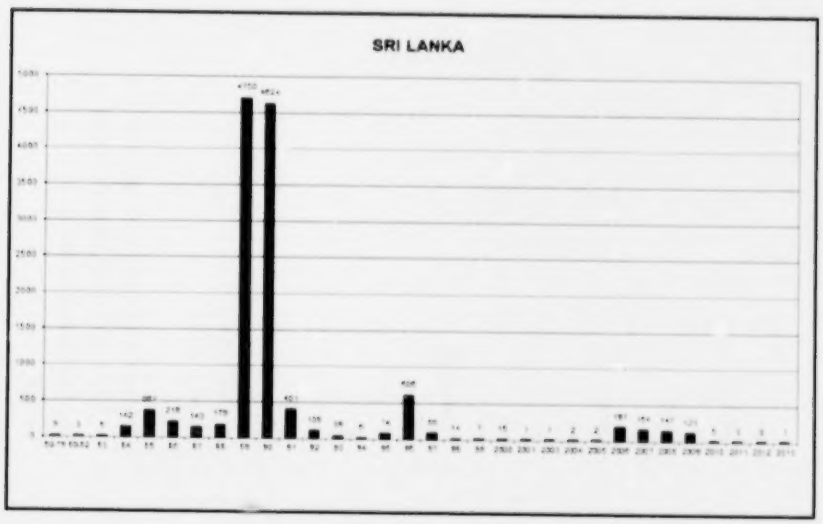
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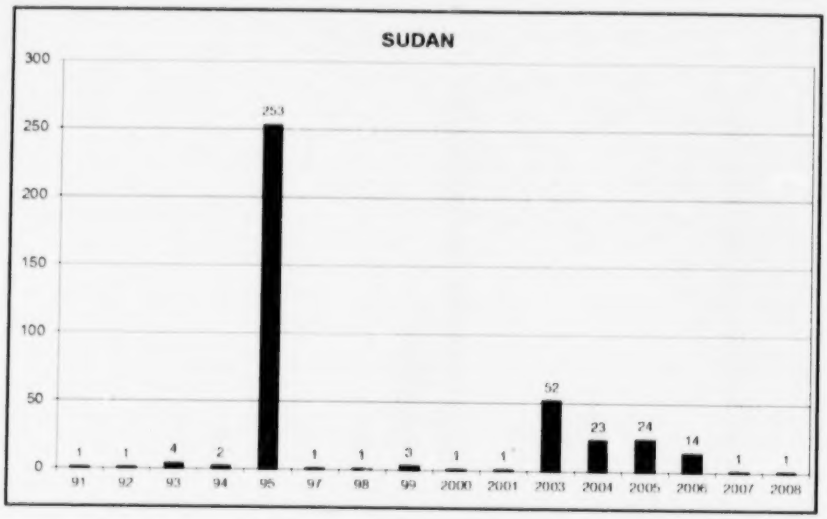
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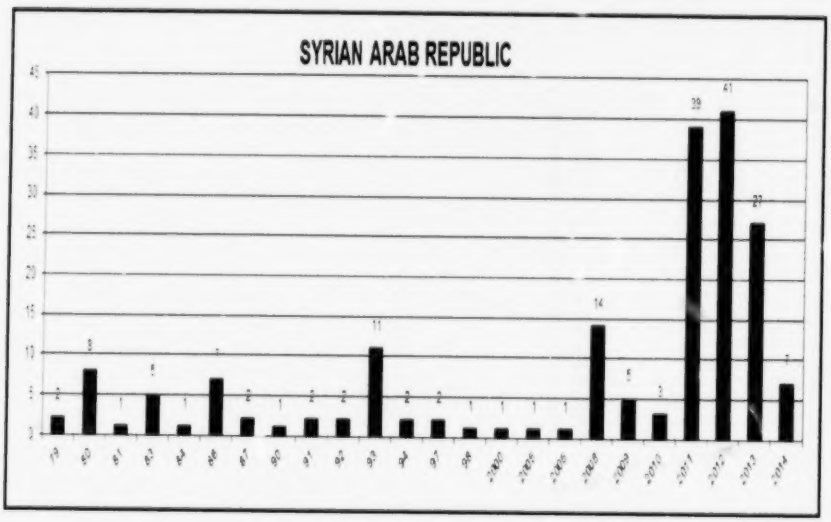
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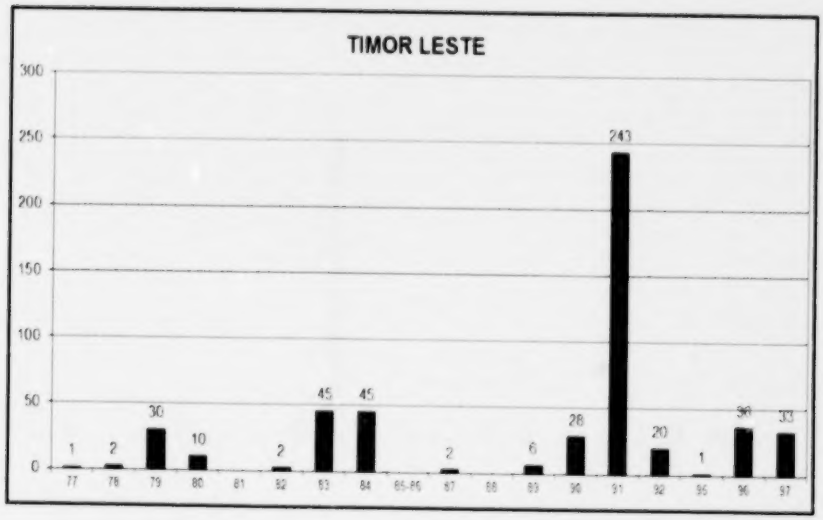
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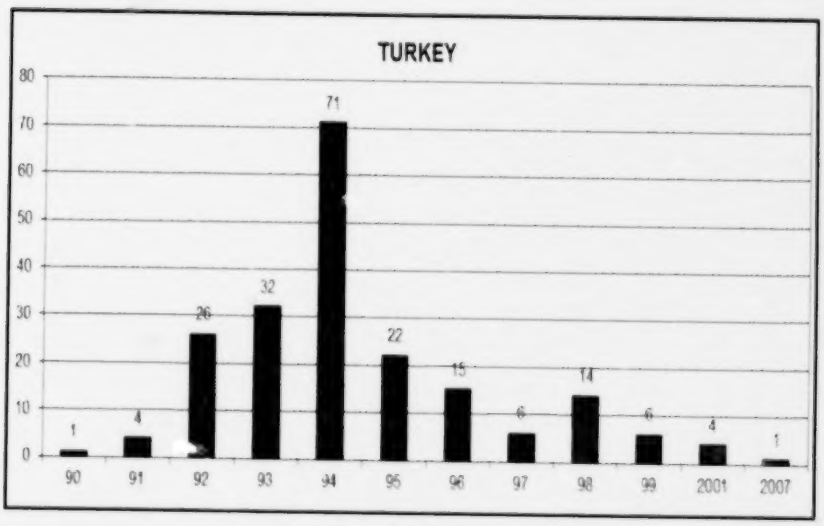
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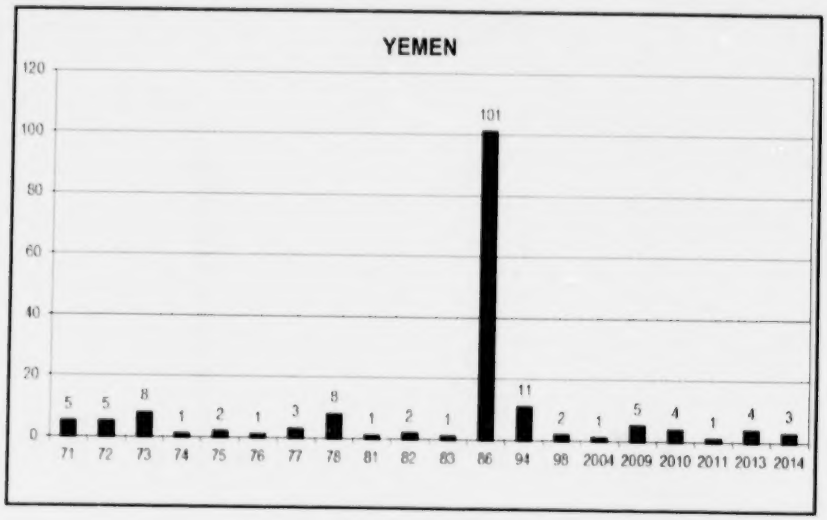
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General Assembly

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Human Rights Council
Thirtieth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Mission to Serbia, including Kosovo* **, ***

Summary

The Working Group on Enforced or Involuntary Disappearances visited Serbia, including Kosovo, from 19 to 26 June 2014.

The Working Group wishes to thank the Government of Serbia, the United Nations Interim Administration Mission in Kosovo (UNMIK) and the authorities in Kosovo for their cooperation before and during the visit.

The visit took place in the context of an official regional visit during which the Working Group also visited Croatia and Montenegro. Given the amount of time that has passed since the enforced disappearances occurred and the advanced age of many witnesses, relatives and perpetrators, there is an urgent need for everyone involved in the search for missing persons in the region to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex, is circulated in the language of submission only.

** Late submission.

*** All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

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The Working Group is concerned that regional cooperation is marred with mutual mistrust. It calls on everyone involved to contribute to fostering a trusting environment to promote regional cooperation, inter-ethnic reconciliation and social cohesion. The Working Group stresses that successful cooperation requires clear and strong political commitment from the highest levels of all parties involved.

The Working Group stresses that enforced disappearance should be established as a separate offence in domestic legislation. The Working Group calls on the Government of Serbia and the authorities in Kosovo to continue their efforts in the search for missing persons and the identification of human remains; to ensure efficient prosecution of war crimes in line with international standards; to adopt all measures necessary to combat impunity; and to set up comprehensive reparation programmes.

The Working Group is of the view that international bodies acting as interim administrators in Kosovo should be held accountable for human rights violations. It calls on relevant international bodies to facilitate the search for missing persons and to ensure effective investigations into and prosecution of war crimes.

Annex

[English only]

Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Serbia, including Kosovo (19-26 June 2014)

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I. Introduction

1. The United Nations Working Group on Enforced or Involuntary Disappearances, represented by three of its members, Ariel Dulitzky, Jasminka Dzumhur and Osman El Hajjé, visited Serbia, including Kosovo, from 19 to 26 June 2014.

2. The purpose of the visit was to examine matters related to enforced disappearances and missing persons in Serbia, including Kosovo, focusing in particular on truth, justice, reparation and memory for victims. While the Working Group is mandated to deal with issues related to enforced disappearance, the issues related to enforced disappearance and missing persons are clearly interlinked in this particular context. The Working Group makes reference in the present report to victims of enforced disappearance and missing persons, and remains aware of the legal and factual differences between them.

3. The Working Group thanks the Government of Serbia for its cooperation before and during the visit. It would also like to thank the United Nations Interim Administration Mission in Kosovo (UNMIK), in particular the Special Representative of the Secretary-General for Kosovo and Head of UNMIK, and the authorities in Kosovo for their support in the organization and conduct of the visit in Kosovo. The Working Group also thanks the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Human Rights Adviser in Serbia and the OHCHR stand-alone office in Kosovo for their assistance and advice before and during the visit.

4. During the visit, in Serbia, the delegation held meetings with the Assistant Minister of Foreign Affairs; the President of the Government Commission on Missing Persons; the Assistant Minister for Legislation and other representatives of the Criminal Department of the Ministry of Justice; the Head of the Office for War Crimes, representatives of the Cabinet and of the Ministry of the Interior; the Director of the Government Office for Human and Minority Rights; the First Deputy of the War Crimes Prosecutor and the Senior Adviser of the War Crimes Prosecutor; the President of the Parliamentary Committee on Human and Minority Rights and Gender Equality; the Deputy Ombudsperson for the Rights of Persons Deprived of Liberty; relatives of missing persons and associations of their families, non-governmental organizations and other civil society and international representatives. During the visit, the Working Group attended the exhumation of the mass grave in Rudnica, Raska.

5. In Kosovo, the delegation held meetings with the President of Kosovo, the Government Commission on Missing Persons of Kosovo, representatives of UNMIK and members of the UNMIK Human Rights Advisory Panel, the European Union Rule of Law Mission in Kosovo (EULEX), other international representatives, relatives and associations of families of missing persons, and other non-governmental organizations. During the visit, the Working Group visited Pristina, Gracanica and Rezala.

6. The Working Group thanks all interlocutors for their cooperation and the valuable inputs provided.

II. Regional context

7. The visit to Serbia, including Kosovo, took place in the context of an official 16-day regional visit which also included Croatia and Montenegro. While the present report addresses matters mainly related to Serbia, including Kosovo, the issue of enforced disappearances and missing persons in the Western Balkans cannot be examined without

taking into account the general regional perspective.[1] The Working Group visited Bosnia and Herzegovina in 2010 (see A/HRC/16/48/Add.1). According to the International Committee of the Red Cross (ICRC), to date, the fate or whereabouts of over 23,000 persons missing as a result of the Balkan conflicts has been established. However, ICRC has indicated that over 11,000 persons are still missing in the region and that there are unidentified remains belonging to hundreds of bodies in morgues throughout the region.[2] The Working Group identified some common issues and challenges relating to missing persons and disappearances in the region.

8. Despite impressive results in the past, progress in the search for missing persons in the region has slowed down significantly in recent years, and many families are extremely frustrated by that. It is becoming urgent to ensure that the process of identifying mass grave locations and burial places speeds up as soon as possible, primarily because memories are fading and individuals, places and events are more difficult to identify. Furthermore, some of the witnesses have died or are likely to die in the next few years. Additionally, and even more importantly, some relatives of missing persons are reaching the end of their lives and risk dying without ever knowing the truth about the fate or whereabouts of their loved ones.

9. The conflicts in the former Yugoslavia broke one country into several independent entities. That resulted in specific challenges, primarily obstacles to the prosecution of war crimes in the region, since the prosecution of war criminals may create tensions among States and entities.

10. In the absence of a legal framework for regional cooperation, searching for the disappeared and missing persons, conducting investigations and bringing those responsible for war crimes to justice becomes critically challenging, particularly because many victims, witnesses and perpetrators are living in the territories of different States and the scenes of the crimes are located in different countries. Often, the presence of an alleged perpetrator in another country where there is no willingness or legal grounds to prosecute leads to insurmountable obstacles to achieving accountability. Insufficient witness protection and the lack of incentives to encourage people to provide more information have also contributed to the slow progress of investigations.

11. Progress is also hampered by the fact that information and evidence that are available are often not shared across borders in the search and identification of the missing, as well as in the investigation, prosecution and conviction of war criminals. There is no centralized regional database on cases of missing persons, not even a list of all missing persons in the region. Several representatives of organizations of families of the disappeared expressed frustration at the ongoing and slow-paced discussions on the creation of a common list of the disappeared. The Working Group notes in this respect that a meeting among governmental institutions in charge of the issue of missing persons in the Western Balkans was held in May 2015 to discuss the establishment of a joint list of missing persons in the territories of the former Yugoslavia.

12. Furthermore, some archives that may contain information on the fate and whereabouts of the missing are not fully accessible.

13. A common gap at the regional level is the absence in existing legal systems of an autonomous crime of enforced disappearance and the absence of an encompassing framework for compensation and reparation for victims and their relatives.

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[1] For reports on the work of the Working Group in the region during the conflict, see E/CN.4/1994/26/Add.1, E/CN.4/1995/37, E/CN.4/1996/36, and E/CN.4/1997/55.

[2] See www.icrc.org/eng/resources/documents/interview/2013/08-28-disappeared-missing-western-balkans-milner.htm.

14. Another challenge in the Western Balkans is that between 3,000 and 5,000 of the bodies that have been exhumed have not yet been identified. Even after DNA analysis and cross-checking with the DNA database, which contains blood samples from over 97 per cent of the relatives of the victims, no match has been found in those cases. There are several possible explanations for that. It may be that, owing to the traditional methods that were used until the year 2000, there were misidentifications. Some estimates suggest that up to 30 per cent of identifications made using traditional methods may be erroneous. In order to verify the identifications that were made using traditional methods, all the bodies identified using those methods would have to be exhumed and bone samples taken for DNA testing. However, that would be an extremely difficult and painful process for the family members. It is also possible that some of the exhumed bodies are those of persons whose deaths were unrelated to the conflict. That could be the case if, for example, the bodies of victims of the conflict were buried in graveyards and their bones intermingled with those of other bodies over time. In addition, there is the possibility that the DNA samples match blood samples of relatives of missing persons from another country in the region, given the above-mentioned lack of a joint regional DNA database.

15. The International Commission on Missing Persons has actively promoted the signing of a declaration on missing persons. The Working Group was pleased to learn that, on 29 August 2014, Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses.[7] The Working Group welcomes this initiative, which highlights the primary responsibility of States in addressing the issue of missing persons, with the aim of guaranteeing the rights of victims. The Declaration also stresses the need for cooperation between Governments and with international and other organizations in the process of establishing the whereabouts of the missing persons. The authorities in Kosovo informed the Working Group that they had expressed their willingness to become a signatory to the Declaration, to no avail. The Working Group recognizes the importance of involving the authorities in Kosovo, through appropriate means, in regional cooperation activities to address the issue of missing persons.

16. The Working Group recognizes the important work that ICRC has carried out in the Balkans in the past 20 years, including facilitating negotiations and cooperation between concerned parties. Binational initiatives, many of which were facilitated, promoted and led by ICRC, are welcome developments that should be strengthened and expanded.

17. The International Commission on Missing Persons and ICRC have carried out important work in helping States to establish the whereabouts and identity of those who went missing during armed conflicts in this region, and in coordinating joint exhumations. They also played an essential role in the process of DNA analysis and collection of blood samples from family members of missing persons, which is a key precursor to the identification of the bodies that were recovered during the exhumation processes. Moreover, the Commission has facilitated cooperation between associations of families of disappeared persons from the region and is providing permanent support to the Regional Coordination of Missing Persons' Family Associations from the former Yugoslavia, which is an umbrella group of associations of families of disappeared persons from countries in the region.

18. The Working Group notes that some initiatives have been taken for regional cooperation in the search for the disappeared and in the area of transitional justice,

[7] See www.ic-mp.org/wp-content/uploads/2014/08/signed-declaration-2.pdf.

including the planned establishment of a regional truth commission (known as RECOM), as a non-political regional network of civil society organizations and individuals.

III. General situation concerning enforced disappearances and missing persons in Serbia, including Kosovo

19. Many years after the end of the conflicts, some progress in tracking and identifying missing persons has been achieved. In Serbia, a State Commission for Humanitarian Issues was established in November 1994, which included a Department for Searching for Missing Persons. In 2006, the Government established the Commission on Missing Persons, with a mandate to direct and coordinate activities in respect of the exhumation and identification of remains of missing persons found on the territory of Serbia. This crucial and active intergovernmental body includes representatives from 10 government departments.

20. An important mechanism addressing the issue of missing persons is the Working Group on persons unaccounted for in connection with events in Kosovo between 1998 and 1999 (Working Group on Missing Persons), which is chaired by ICRC. The Working Group was established in 2004 as a humanitarian forum facilitating the exchange of information between the Serbian authorities and the authorities in Kosovo on the fate and whereabouts of missing persons, in particular on potential gravesite locations. The Working Group members are appointed by both the Serbian authorities and the authorities in Kosovo. Representatives from relevant embassies and other international and national institutions are regularly invited to attend public sessions of the Working Group as observers. Under the auspices of the United Nations, the Working Group has contributed to the resolution of many cases over the years. On several occasions, various people involved in the process have stated that the participation of UNMIK in this mechanism is highly appreciated. In addition, the Government Commission on Missing Persons of Kosovo was established in 2006, as a continuation or upgrade of the Office on Missing Persons, which was operational until 2006 within the Office of the Prime Minister. Law No. 04/L-023 on Missing Persons, which entered into force in 2011, provides the legal mandate of the Commission on Missing Persons. The Commission is mandated to lead, supervise and coordinate activities with local and international institutions with regard to the clarification of the fate of missing persons as a result of 1998-1999 events in Kosovo.

21. With regard to regional cooperation, Serbia has signed a series of agreements and memorandums with Croatia in order to facilitate cooperation in respect of the search and identification of the missing, especially the exchange of information. An agreement with Bosnia and Herzegovina is in the process of adoption. Despite these agreements, practical challenges remain.

22. While no enforced disappearances reportedly occurred in central Serbia, as of June 2014, there were reportedly 1,443 families of missing persons living in Serbia. Furthermore, a significant number of bodies of persons who went missing in Kosovo were relocated after their deaths and were later found in central Serbia. Indeed, the Working Group visited the site of Rudnica, where the bodies of persons from the village of Rezalla, which is within the administrative boundary lines of Kosovo, were found. It is believed that the individuals were killed in Rezalla, buried there for a brief period and thereafter moved to the Rudnica site. Furthermore, during the conflicts, about 480 bodies washed ashore in Serbia from rivers that flow there from other territories. Only about 200 of them have been identified.

23. According to some associations of relatives of disappeared persons, some missing persons are not included in the list of missing persons because their disappearance was not reported to ICRC or the Red Cross of Serbia, or because the ICRC criteria for registering a

case were not fulfilled. According to the figures provided by the Government Commission on Missing Persons of Serbia, this is the case for approximately 740 Serbian citizens who fled to Serbia from Croatia. The Commission is reviewing those cases in coordination with the Croatian authorities.

24. ICRC has registered 6,027 cases of missing persons in connection with the 1998-2000 Kosovo conflict. Of those cases, 4,316 have been closed: 1,372 persons were located alive, the bodies of 2,729 were found, identified and returned to the families and 215 cases were closed for administrative reasons. As at 24 June 2014, some 1,711 persons from all ethnic backgrounds were missing as a result of the Kosovo conflict.

25. In Kosovo, most of the disappearances occurred during and immediately after the conflict, when international forces took charge. One of the biggest problems in the search for missing persons continues to be the lack of accurate information that could lead to the disclosure of their fate and whereabouts and the circumstances of their disappearances. A contributing factor is that different forces have had effective control of the territory of Kosovo, and assistance from the forces that were operating in Kosovo, such as the International Security Force in Kosovo (KFOR), is crucial in the search for and identification of persons who went missing as a result of the conflict. The authorities in Kosovo informed the Working Group after its visit that the Commission on Missing Persons has begun strengthening its cooperation with the competent institutions in Croatia and Montenegro to address both the issue of residents of Kosovo who went missing during the conflict in the former Yugoslavia and the issue of residents of other territories who disappeared during the conflict in Kosovo.

IV. Serbia

A. Legal framework

26. Serbia ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2011 and accepted the individual complaints and inquiry procedures pursuant to it. In February 2015, the Committee on Enforced Disappearances reviewed the initial report of Serbia under the Convention (CED/C/SRB/1).

27. The 2011 Criminal Code does not contain enforced disappearance as an autonomous crime. Enforced disappearance is recognized only in the context of crimes against humanity, when enforced disappearances are committed as part of a widespread and systematic attack against civilians. Amendments to the Criminal Code are being discussed and may result in the inclusion of an autonomous crime of enforced disappearance.

28. There is no law regulating the status of missing persons and guaranteeing the rights of victims. That is a significant barrier to the realization of the rights of the relatives of the disappeared. In the absence of such a law, the only possible way for relatives of the disappeared to potentially qualify for any compensation or pension as a war victim is to legally declare the disappeared relative dead. There is no procedure in place for obtaining a declaration of absence by reason of enforced disappearance. Many relatives understandably refuse to legally declare their disappeared family member dead in the absence of any information on his or her fate or whereabouts and perceive that legal procedure as an additional trauma. As a result, they suffer additional consequences on several fronts, including in terms of social welfare, financial matters, family law and property rights.

29. The legislative framework provides for free legal aid to defendants,[4] but not to the victims of the offence and their relatives, which poses a serious challenge for some relatives of the disappeared. More broadly, the families of the disappeared often feel that they are not adequately informed about ongoing investigation processes, the results thereof, or ongoing trials.

30. The Criminal Procedure Code includes a narrow definition of victim, indicating only that the injured party is a person whose personal or property rights have been violated or jeopardized by a criminal offence.[5] That definition does not enable the relatives of a disappeared person to be recognized as victims in criminal proceedings. The narrow definition fails to encompass all those who have suffered harm as a result of the disappearance.

31. The legal framework provides some support and protection for witnesses in court proceedings.[6] It also provides for psychological support for victims and witnesses and a specific protection programme for witnesses in high-risk cases. However, there is an acute need to strengthen and systematize such programmes. The psychological support available to victims and witnesses should not be restricted to a short period of time before the person appears in court, as it is crucial both before and after the trial. It is important to include a clear gender perspective in such programmes and to pay special attention to the specific trauma of family members of missing persons. The protection programme for witnesses in high-risk cases is crucial to ensure that witnesses come forward to testify without putting themselves at risk. Many witnesses are reluctant to testify for fear of reprisals and threats, which in some cases results in acquittals owing to a lack of evidence. The challenge of providing adequate witness protection seems to be particularly pronounced in respect of cases relating to the Kosovo conflict.

32. Serbia does not have a national strategy on human rights or a human rights action plan. Such documents have been used in other countries as frameworks to address in a holistic manner the rights and concerns of the victims of enforced disappearances and their relatives.

B. Right to the truth

33. The Serbian Commission on Missing Persons has reported that, since January 2013, the authorities have carried out exhumations in four different locations. Representatives of Bosnia and Herzegovina and Croatia were present at and followed all the activities in relation to the exhumations. Similarly, Serbian representatives follow all exhumations that are carried out in Bosnia and Herzegovina and Croatia.

34. The mass grave in Rudnica was found as a result of an exchange of information within the Working Group on Missing Persons. Some 45 bodies were found in the exhumations, which were performed in accordance with the order issued by the War Crimes Chamber of Belgrade High Court, organized and coordinated by the Government Commission on Missing Persons and monitored by representatives of Belgrade and Pristina from the Working Group on Missing Persons, EULEX and ICRC. Serbian experts, working in cooperation with EULEX experts, took DNA samples, while the International Commission on Missing Persons performed the DNA analysis. The bodies were transported to the Department of Forensic Medicine in Pristina. After identification, the remains will be

[4] See art. 32 of the Constitution of the Republic of Serbia, 2006.

[5] See Criminal Procedure Code of Serbia, General Part Chap. 1, Basic Provisions, art. 2, para. 11 (2011).

[6] Ibid., art. 102.

handed over to the families, with the assistance of the Commission on Missing Persons of Kosovo.

35. In the years preceding the discovery of that mass grave, the amount of information exchanged within the Working Group on Missing Persons was limited and the number of cases it was able to clarify was relatively low. There is a need for a new strategy to reinvigorate efforts to identify possible gravesites.

36. In 2001 and 2002, hundreds of bodies were exhumed from large mass graves which were located in Bajina Bašta, Petrovo Selo and Batajnica, as a result of cooperation between Serbia and UNMIK, and later EULEX and the International Commission on Missing Persons. According to the Serbian Commission on Missing Persons, over 800 bodies were exhumed, over 90 per cent of which were identified. The remains are those of persons who were killed in Kosovo.

37. The determination of the fate or whereabouts of missing persons is particularly difficult in the context of Serbia, not only because in many cases the victims went missing on the territory of another State or within the administrative boundaries of Kosovo, but also because in some cases, the bodies of the missing were removed from the initial burial ground or scene of the crime and transferred elsewhere. Given that the police or military might have documented the transfer of bodies in some instances, some families of the disappeared observed that full access to such information could alleviate the cumbersome process of clarifying the fate or whereabouts of those who are still missing. Some requests to access such information have been rejected by the competent authorities in Serbia. However, a positive step in that regard was the opening of the archives of the Ministry of the Interior in 2013. The archives of the Ministry of Defence are kept secret and are not fully available.

38. The obstacles encountered in the determination of the fate and whereabouts of missing persons can be overcome only with full and open regional cooperation and coordination. The Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses (see para. 15 above) defines the responsibilities and role of States in the search for a solution to the problem, which is an important step in the process. The Working Group has learned that Serbia has signed a bilateral protocol with Croatia and has initiated negotiations with Bosnia and Herzegovina on a similar protocol.

39. Family members of missing persons repeatedly told the Working Group that witnesses, some of whom the family members could easily identify and locate, might have knowledge about the location of a mass grave or the circumstances of the death of the missing persons. However, the witnesses had not voluntarily provided that information because of intimidation, threats or fear that they would implicate themselves in a crime. It is imperative that an environment be created that is conducive for all persons who have any information that could potentially lead to the clarification of the fate or whereabouts of missing persons to come forward, and to provide incentives for them to do so. There is an urgent need to ensure swift progress in the identification of mass grave locations and burial places.

40. Several hundred exhumed bodies remain unidentified. For some specific remains, it is very difficult to extract any DNA because the bones are not suitable for DNA analysis. In order to speed up identification, in 2014 Serbia signed an agreement with the International Commission on Missing Persons, which has a regional database of missing persons. It is hoped that this will lead to additional identifications. The agreement relates specifically to the provision of assistance in locating, recovering and identifying missing persons related to the conflict in Kosovo.

41. The Working Group regrets the absence of a museum or information centre on the victims of the war and the fact that public awareness on past events has not been raised.

C. Right to justice

42. Specialized war crimes chambers to deal with war crime cases have been established. The main instance that holds alleged perpetrators accountable for war crimes is the Office of the War Crimes Prosecutor and the Department for War Crimes of the Higher Court in Belgrade. When evidence of a war crime is discovered, the War Crimes Prosecutor verifies the information and proceeds with the prosecution of the alleged perpetrator or perpetrators based on that assessment. According to the statistics published by the Office of the War Crimes Prosecutor, as at 29 December 2014, some 440 persons had been prosecuted for crimes committed during the war, of which 170 had been indicted.[7] About 80 per cent of those who have been prosecuted are of Serbian nationality. The cases are at various stages of proceedings before the competent courts. There is, however, an apparent decrease in the number of new war crimes indictments, as since 2009/2010 there have been only three newly indicted alleged perpetrators. The 440 ongoing prosecutions relate to 3,010 victims.

43. The alleged perpetrators of war crimes are prosecuted under the Criminal Code of 1993, which was applicable at the time the crimes were committed, but does not contain any provisions relating to the autonomous crime of enforced disappearance or to enforced disappearance as an element of a crime against humanity. However, alleged perpetrators of enforced disappearances can be prosecuted for other criminal offences, such as unlawful detention, hostage-taking, murder and torture.

44. The 440 individuals who are being prosecuted are mainly low-ranking officials, as the Serbian authorities acted on the assumption that the International Tribunal for the Former Yugoslavia[8] was responsible for the prosecution of high-level officials. That created a worrying gap for middle-ranking officials such as battalion commanders and municipal leaders who were not prosecuted by the Tribunal or the Serbian war crimes chamber. The Working Group welcomes the fact that the Serbian authorities have expressed their intention to address that gap, which results in impunity.

45. Some alleged perpetrators, even while indicted in relation to war crimes, are still exercising their official functions. This is a source of impunity and frustration for victims, and may also entail constant threats and intimidation to victims, witnesses and their families.

46. Serbia applies the principle of non-extradition of its own nationals, who cannot be handed over to a foreign State for prosecution, but criminal proceedings are supposed to be instigated in Serbia at the initiative of the prosecutor. However, the Working Group is concerned at reports that there is some resistance, including from the public and the media, to efforts to prosecute Serbian suspects in relation to war crime charges. The work of those

[7] See www.tuzilastvorz.org.rs (accessed 12 January 2015).

[8] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990s. Those indicted by the Tribunal include heads of State, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Bosnia and Herzegovina, Croatia, Serbia, the former Yugoslav Republic of Macedonia and Kosovo. See www.icty.org/sections/AbouttheICTY.

investigating and prosecuting war crimes is reportedly not popular and they are often perceived and labelled as traitors.

47. Representatives of the War Crimes Prosecutor informed the Working Group that the trials in absentia of some Serbian nationals in Croatia in respect of war crimes are not recognized by Serbia. Should those cases be brought before a Serbian court, they would revert to the pretrial phase.

48. Bilateral cooperation between Serbia and Croatia is regulated by the European Convention on Mutual Assistance in Criminal Matters, which was ratified by the former Federal Republic of Yugoslavia in 2001.

49. The Organization for Security and Cooperation in Europe supported the improvement of regional judicial cooperation on war crimes proceedings between Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The strengthened regional contacts have contributed to the development of specific mechanisms for better cooperation, such as the memorandum signed by the War Crimes Prosecutor and the Public Prosecutor of the Republic of Serbia and the State Prosecutors of Bosnia and Herzegovina and Croatia. These regional contacts have also paved the way for increasing cooperation among the offices of the prosecutors of these States in dealing with specific cases.

50. In order to ensure more efficient and professional cooperation between the offices of the war crimes prosecutors, several agreements have been concluded. In 2005, a joint memorandum on pretrial cooperation was signed between the offices of the supreme prosecutors in Bosnia and Herzegovina, Croatia and Serbia. Also in 2005, on 5 February, the Memorandum on the Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes was signed by the Serbian Public Prosecutor and War Crimes Prosecutor and the Croatian Chief Prosecutor. It regulates the process of exchanging information regarding the criminal offences of war crimes between the offices of the prosecutors of the two States. Both States are obliged to exchange data, reports, documents and information relevant to war crimes investigations. To date, the Croatian authorities have initiated proceedings against citizens of Serbia in 319 cases based on information exchanged pursuant to the memorandum. The Croatian authorities requested specific information on those cases from Serbia and at a later stage submitted the cases to the Serbian War Crimes Prosecutor, who then examined whether there were sufficient grounds to proceed with the prosecution.

51. Article 2 of the Law on the Organization and Competence of Government Authorities in War Crimes Proceedings* extends the jurisdiction of Serbia to all States of the former Socialist Federal Republic of Yugoslavia, regardless of the citizenship of the perpetrator or the victim. The law was applied, for example, in the Purda case and the Divjak case. On 13 October 2006, a special agreement on cooperation in respect of prosecuting perpetrators of war crimes, crimes against humanity and genocide was signed with Croatia. On 31 January 2013, Serbia signed a similar protocol with Bosnia and Herzegovina. On 31 October 2007, Serbia and Montenegro signed the Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. It is hoped that these agreements will further contribute to the exchange of evidence, documents and information that will facilitate more effective investigation and punishment of all war crimes. The Protocol on cooperation between the offices of the prosecutors completes the scope of the existing regional cooperation arrangements in the area of war crimes investigations.

* As amended by the Parliament of Serbia in 2004.

52. On 11 November 2004, the Serbian War Crimes Prosecutor met with the UNMIK judicial representatives, the Deputy Special Representative of the Secretary-General for UNMIK in charge of judicial and police sectors, and the UNMIK Justice Department Director. The meeting resulted in an agreement providing for witnesses located on the territory of Kosovo to be examined by the Serbian judicial authorities, and for UNMIK judicial representatives to examine witnesses located on the territory of the Republic of Serbia.

53. These bilateral or multilateral agreements on cooperation provide some guidance on technical cooperation. However, the Working Group learned that, given the technical nature of the agreements, their implementation is entirely dependent on political will, which is often lacking. In this respect, it should be emphasized that effective regional cooperation is one of the preconditions for the International Tribunal for the Former Yugoslavia to refer cases to national courts.

54. To date, there has been no agreement between the different regional police forces in respect of cooperation on war crimes, unlike in the area of organized crime. Cooperation between police forces on war crimes is therefore conducted on an ad hoc basis. The need to increase and operationalize regional police cooperation on war crimes cases was repeatedly expressed to the Working Group during its visit.

55. According to information from the Office of the War Crimes Prosecutor in Serbia, in terms of regional cooperation there were a total 303 exchanges of information: 159 with Croatia, 45 with Bosnia and Herzegovina, 12 with Montenegro and 87 with EULEX/UNMIK.[10]

D. Right to reparation

56. Serbia has established reparation programmes for the victims of the war, but not specifically for the victims of enforced disappearance and their families. The reparation programmes mainly consist of monthly financial benefits that are stipulated in the Law on the Fundamental Rights of War Veterans, Disabled Veterans and Families of Fallen Soldiers, and the Law on the Rights of Civilian Victims of War. These programmes do not apply to family members of civilian missing persons. Only civilian victims who have been injured by enemy troops on the territory of Serbia have the right to claim compensation under the current law. That may result in different treatment among the different categories of victims, and may prevent many of them from receiving adequate compensation. This falls short of the requirements specified by the Working Group in its general comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, according to which the right to redress of victims of an act of enforced disappearance and their family places States "under an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation".[11] The general comment also indicates that redress for acts of enforced disappearance includes "the means for as complete a rehabilitation as possible".[12]

57. Relatives of the disappeared stated that only those who do not have any income receive some social benefits as reparation. The amount of compensation is dependent on the household income and prior to receiving it, the relatives have to legally declare the missing

[10] See www.tuzilastvorz.org.rs.
[11] See E/CN.4/1998/43, para. 72.
[12] Ibid., para. 75.

person as dead. This is in contrast with the requirement in general comment on article 19, which states that "the right of compensation in relation to an act of enforced disappearance shall not be made conditional on the death of the victim … If the death of a victim cannot be established … States have an obligation to provide for appropriate legal procedures leading to the presumption of death or similar legal status of the victim which entitles the dependants to exercise their right to compensation".[13]

58. The current system of reparations does not cover all victims of enforced disappearances. A number of family members of disappeared relatives have not received any compensation or financial support. While the Working Group welcomes the efforts to implement a comprehensive plan to ensure that all victims of war crimes are covered and receive adequate reparations, there is currently no comprehensive plan for compensation of victims of enforced disappearance.

V. Kosovo

A. Legal framework

59. Enforced disappearance has not yet been incorporated as an autonomous crime in the criminal legislation of Kosovo.

60. The authorities in Kosovo adopted the Strategy for Human Rights for the period 2009-2011, and there is an initiative for a new strategy. It is important that this strategy is based on a proper and comprehensive assessment of the human rights situation and includes issues related to enforced disappearances and missing persons.

61. The Constitution of Kosovo recognizes the applicability of international human rights treaties. The authorities in Kosovo informed the Working Group about a number of other laws, such as the Law on Witnesses and the Law on the Department of Forensic Medicine. In Kosovo, two laws have been adopted regulating the status of missing persons and guaranteeing the rights of the victims. The law regulating the status and rights of martyrs, invalids, veterans, members of Kosovo Liberation Army, civilian victims of war and their families determines the status and financial support available. That Law was amended through Law No. 04/L-054, which provides legal recognition of the status of civilian victims of sexual violence related to the conflict in Kosovo. The Law on Missing Persons aims to protect the rights and interests of missing persons and their family members, in particular the right of family members to know the fate of the missing persons. It establishes the powers and responsibilities of the Governmental Commission on Missing Persons.

B. Right to the truth

62. Family members and representatives of associations of families of missing persons expressed their deep frustration about the difficulties they encounter when trying to access the information they need to clarify the fate and whereabouts of their loved ones. As provided by the Law on Missing Persons, the authorities in Kosovo are reportedly establishing a central register on missing persons, which will include data on the search, recovery and identification process and information on the rights of the victims and their families. Families of missing persons will be granted access to the database.

[13] Ibid., para. 74.

63. One major obstacle to establishing the fate and whereabouts of missing persons in Kosovo is the lack of precise information on the locations of undiscovered gravesites. The Serbian authorities are believed to possess more information than that contained in the documents already submitted. There is a common perception in Kosovo that the Serbian military has complete records of the locations of gravesites, yet has not fully opened its archive. Meanwhile, it is believed that the authorities in Kosovo have not shared information that they possess either. Another difficulty is the reluctance of witnesses to provide information owing to threats, intimidation, a sense of loyalty or the fear that they might implicate themselves in the crime.

64. With regard to identification work, misidentification in the early days has resulted in significant challenges in identifying human remains from recent exhumations. The remains of approximately 300 bodies in the morgue in Pristina have not been identified. The preservation of the bodies is becoming a challenge. According to the International Commission on Missing Persons, 412 unidentified individual DNA profiles from Kosovo do not match any of the blood samples in their database. This confirms the fear that a number of errors occurred during the identification work conducted in the early years based on traditional methods, before the introduction of DNA testing. Civil society organizations and the International Commission on Missing Persons have been promoting a review process to address the misidentifications conducted in the past. Provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care, a review process is essential for the ongoing identification work.

65. The Commission on Missing Persons of Kosovo was established under the Law on Missing Persons, which was adopted in 2011. The Working Group notes the efforts made by the Commission and was informed that the principle of non-discrimination has been given importance in the work of the Commission to ensure that the rights of all families of missing persons are guaranteed, regardless of their ethnic background, religion or military or civil status. However, the Working Group also notes that the seat on the Commission that is reserved for ethnic minority groups has been vacant for some time.

66. EULEX supports the work of the Kosovo Department of Forensic Medicine with respect to the exhumation and identification of bodies. On 30 October 2014, EULEX personnel working for the Kosovo Department of Forensic Medicine carried out a court order in Cabrat cemetery in Gjakova/Djakovica and conducted the exhumation of 14 graves, with the purpose of correctly identifying the remains that had been found in Serbia in 2001. The remains buried in Cabrat cemetery and others buried in Kline/Klina and Malisheve/Malisevo, which are mainly those of victims of the events in Gjakova/Djakovica and Kralan/Kraljane, are linked to more than 50 other cases of individuals still listed as missing persons. The remains were taken to the Department of Forensic Medicine for further identification and DNA analysis. After the process has been finalized in its entirety, the Department of Forensic Medicine will hand over all the correctly identified remains to their families, including those that were identified some years ago but have not yet been handed over to their families. The Kosovo authorities informed the Working Group after its visit about excavations in about 19 different locations in Kosovo and in about 3 different locations in Serbia.

67. Initiatives taken by civil society to seek and tell the truth include collecting evidence, accounts and stories that could contribute to the clarification of the fate of missing persons. Some organizations have also established memorials providing a venue for families of victims to tell their stories publicly and memorize their loved ones.

C. Right to justice

68. The complex situation in Kosovo after the conflicts is a contributing factor to the huge challenges related to the prosecution of the war crimes thereof. UNMIK was established in 1999 pursuant to Security Council resolution 1244 in order to bring a political solution to the Kosovo crisis. As an international civil presence, UNMIK was vested with authority over the territory and population of Kosovo, including all legislative and executive powers and administration of the judiciary.

69. The Working Group is concerned about consistent information received indicating that cases of enforced disappearances and missing persons were not properly investigated by UNMIK during its full-range administration in Kosovo. The Human Rights Committee has raised concern about the failure of UNMIK to effectively investigate many of the crimes perpetrated prior to the UNMIK mandate and bring perpetrators to justice.[14] Similarly, the Working Group notes with concern that the Human Rights Advisory Panel of UNMIK has ruled in several cases that the investigation of enforced disappearances and missing persons carried out by UNMIK failed to meet the minimum standard of an effective investigation as required by international human rights norms. In this regard, the Working Group considers that the failures by UNMIK should be properly addressed and the victims of those failures should be effectively compensated by the United Nations.

70. Since 2008, the mandates of UNMIK have been significantly modified. The adoption of a Presidential Statement by the Security Council on 26 November 2008 allowed the European Union, through EULEX, to operate in the rule of law area in Kosovo. EULEX became fully operational in April 2009 and its current mandate will expire on 14 June 2016. Since the transfer of responsibility from UNMIK, the prosecution of crimes has therefore been carried out by the EULEX War Crimes Investigation Unit and by EULEX prosecutors. The Working Group considers that failures by UNMIK in the early years cannot serve to absolve the current responsibility of EULEX prosecutors and investigators in such cases. The passing of time cannot serve as an excuse; the Working Group calls for EULEX to redouble its efforts to secure the rights to truth and justice of the victims.

71. EULEX had inherited a huge number of reports of missing persons submitted to UNMIK, some of which are not well documented and lack initial investigation. The Working Group also learned that EULEX recruited two additional prosecutors in 2013 and that EULEX judges have competence over war-related criminal trials. Despite efforts made, impunity for war-related crimes has not been eliminated, and only a very small number of cases are being tried each year. In particular, the Working Group received allegations that little progress has been achieved in the investigation and prosecution of abductions that took place in the summer of 1999; none of the cases that have been prosecuted or tried by EULEX to date involve cases of enforced disappearances, despite the number of persons who went missing during the conflict in Kosovo.

72. Since 15 April 2014, no new investigations have been initiated by EULEX, except in what it calls "exceptional circumstances". An important step was the decision, in April 2014, to create a special court for serious crimes committed during and after the conflict in Kosovo. The court will adjudicate cases against individuals based on a 2010 Council of Europe report prepared by Swiss senator Dick Marty, including abductions reportedly committed by some members of the Kosovo Liberation Army. The Working Group welcomes the fact that, on 3 August 2015, the Kosovo Assembly approved a constitutional amendment paving the way for the establishment of the court.

[14] See CCPR/C/UNK/CO/1, para. 12.

73. Most of the cases of enforced disappearances and other grave human rights violations committed in the context of the war should be processed after the transfer of competences to local prosecutors and judges. While local judges and prosecutors are reportedly working side by side with their international counterparts and the number of local judges and prosecutors working at EULEX has increased, the judicial system in Kosovo remains weak and lacks efficiency. The large backlog and the allegation that the judiciary is affected by corruption is concerning. The international community does not sufficiently support and strengthen capacity in Kosovo.

74. Non-attendance of defendants and witnesses at trial has resulted in the delay of criminal proceedings of many war crime cases, and a large number have remained on the docket for years. The Working Group learned that most of the alleged defendants are not in detention, and heard concerning reports of court hearings being cancelled owing to the absence of defendants who were already in custody. Training should be provided to personnel working for custodial services in Kosovo to ensure the delivery of a professional custodial service.

75. One of the main challenges that investigators face is the lack of witnesses ready to provide key testimonies on events and potential perpetrators. The lack of a comprehensive witness protection programme discourages witnesses in Kosovo from giving testimony in court, especially against anyone local, since loyalty is highly valued in the community. The fact that Kosovo is a relatively small community creates additional challenges in the protection of witnesses from potential pressure and harassment from locals. The Working Group welcomes the efforts of EULEX to provide protection for witnesses in high-risk cases by including them in the protection programme, and highlights the importance of further developing the programme. In addition, more should be done to foster conditions and incentives to encourage more witnesses to provide crucial information.

76. In the absence of a formal legal framework authorizing courts in Kosovo to use evidence received by the International Tribunal for the Former Yugoslavia, such evidence is introduced on an ad hoc basis by international EULEX prosecutors, appearing before EULEX international judges. The Working Group considers that the realization of the right to justice in Kosovo takes place in an exceptional context, given the multiplicity of individuals involved in the process and the fact that many of the alleged perpetrators, witnesses and families of victims are not in Kosovo.

77. The Working Group is concerned that justice seems to be left to the goodwill of the relevant parties. Kosovo should not be in a legal vacuum and it should be guaranteed, at a minimum, that those who were most responsible for the war crimes and crimes against humanity, including enforced disappearances, are prosecuted. The Working Group notes with great concern that some alleged perpetrators occupy positions of authority in Kosovo.

D. Right to reparation

78. Many victims in Kosovo have not received adequate reparation for their suffering. Reparation in cases of enforced disappearance entails not only monetary compensation, but also access to health care, legal aid, social benefits and rehabilitation programmes (restitution, satisfaction and guarantees of non-repetition).

79. Most families of victims of enforced disappearance live in poverty, as the direct victims of enforced disappearance were often the breadwinners in the household. While the situation is worse when the same family has more than one direct victim, the Kosovo authorities informed the Working Group that the amount of the pension increases if the family has more than one victim of enforced disappearance. In accordance with the law regulating the status and rights of martyrs, invalids, veterans, members of Kosovo

Liberation Army, civilian victims of war and their families, after conducting an administrative procedure, family members of disappeared persons are entitled to receive 168 euros per month, where there is one direct victim of disappearance in the family, until the whereabouts of their loved ones are established. The Kosovo authorities reported that family members whose relatives have been identified still enjoy by law the right to a pension. That, however, was unclear to relatives with whom the Working Group met during the visit.

80. The Working Group was also informed by family representatives that there are some administrative obstacles in access to that right, including difficulties obtaining documents from municipalities that should be submitted with the pension request; short deadlines; administrative staff who are unprepared for the implementation of the law; and the fact that the decisions of responsible bodies are reportedly issued in the Albanian language only. At the time of the visit of the Working Group, the pension was being provided to around 350 family members of disappeared persons. Before 2011, when the Law on Missing Persons entered into force, many families reportedly moved between categories of war victims as provided by law. Although the rate of the compensation has increased, the material support that families receive remains limited and is not enough to cover their basic living expenses. There is a difference between the compensation provided to civilians and soldiers; former combatants receive more compensation than civilian victims.

81. In addition, some families of victims of enforced disappearances live in the same community as the alleged perpetrators of those disappearances. While the Working Group did not receive any reports of serious harassment, families of victims feel re-traumatized by that fact. The authorities in Kosovo should facilitate and support the rehabilitation of the families of victims of enforced disappearances, including by taking measures to allow them to live in an environment in which they can best rehabilitate.

VI. Conclusions and recommendations

82. **Considering the amount of time that has passed since the disappearances occurred in the Western Balkans and the very advanced age of many relatives and witnesses, there is an urgent need for everyone involved in the process of searching for missing persons to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared. The issue of disappearances should be considered as a humanitarian as well as a human rights issue on the agenda of political processes. In particular, it should be on the agenda of the Belgrade-Pristina dialogue facilitated by the High Representative of the European Union for Foreign Affairs and Security Policy.**

83. **The Working Group recognizes that the United Nations and other international bodies did not adequately address a number of issues in relation to missing persons, and that the international community is also responsible for the lack of truth, justice and reparation that relatives continue to face.**

84. **The Working Group acknowledges the current working-level cooperation that takes place between forensic experts, prosecutors and judges across the region. However, speculation on political intentions has resulted in the ad hoc nature of the cooperation. The level of cooperation, including cooperation between international institutions, the Serbian authorities and the authorities in Kosovo, should be enhanced. Successful cooperation requires clear and strong political commitment from the highest levels of all parties involved. Currently, regional cooperation is marred by mutual mistrust, which results, inter alia, in delays in exhumations. Therefore, building trust between concerned parties is of high importance, they must**

all contribute to that process by putting ill-will behind them and fostering a trusting environment that will further promote regional cooperation. In the meantime, mature political conduct and determined political leadership are required in order to foster the inter-ethnic reconciliation and social cohesion that could eventually help establish the truth in the region.

85. The Working Group reiterates its gratitude for the cooperation it received throughout its visit. The Working Group was deeply saddened by the unbelievable suffering that the relatives of missing persons endured and have continued to endure for so many years. In the hope of being able to contribute some elements of a solution, the Working Group reiterates its offer of future cooperation and dialogue with all stakeholders.

A. Regional recommendations to Governments and authorities

86. Act with due urgency and speed in the matter of enforced disappearances, as required by the Declaration on the Protection of All Persons from Enforced Disappearance and other international obligations.

87. Disclose all information on mass graves and make that information accessible to all countries and authorities in the region.

88. Ensure high-level commitment to clarifying the fate and whereabouts of all missing persons, bringing all perpetrators to justice and ensuring full reparation for all victims.

89. Reinvigorate efforts to establish a common regional list of the disappeared.

90. Speed up the process of tracing missing persons through strengthened cooperation with institutions engaged in tracing disappeared persons in neighbouring countries, especially between prosecutors and judicial institutions. Such cooperation must include the exchange of relevant evidence.

91. Everyone involved must support the search for missing persons by providing relevant information and documentation at the national and regional level.

92. Continue the regional dialogue on missing persons and initiatives aimed at finding solutions to properly solve the issue.

93. Implement fully the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses, signed by Bosnia and Herzegovina, Croatia, Montenegro and Serbia.

94. Improve cooperation in accordance with the 1996 bilateral protocol between Serbia and Croatia.

95. Offer more in-service training to judges and prosecutors on the Declaration on the Protection of All Persons from Enforced Disappearance and other international instruments.

96. Immediately open archives that are relevant to cases of enforced disappearances in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons.

97. The Government of Serbia and the authorities in Kosovo should actively contribute to the Working Group on Missing Persons, including with information on new gravesite locations.

B. Recommendations to Serbia

98. **Establish enforced disappearance as a separate offence in accordance with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance. The offence of enforced disappearance should be punishable by appropriate penalties that take into account its extreme seriousness.**

99. **Recognize the status of families of missing persons by law and guarantee their rights in a non-discriminatory manner.**

100. **Establish an effective public system of free legal aid to allow relatives of missing persons to obtain legal assistance if they cannot afford it.**

101. **Ensure a gender-sensitive approach when designing and implementing reparation programmes, in order to address gender inequality.**

102. **Adopt a national human rights strategy or national action plan on human rights to address the issue of missing persons in a comprehensive manner.**

103. **Strengthen and systematize the witness protection programmes to ensure they are comprehensive.**

104. **Ensure reparation is available to all victims of enforced disappearance. Compensation should not be limited to the victims of enemy forces only. Serbia should consider introducing the necessary legislative amendments in order to broaden the definition of victim.**

105. **Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.**

106. **Ensure the equitable allocation of existing resources for the civilian victims of war in order to eradicate the discrimination between, inter alia, the budget for civilian and military victims of war.**

107. **Raise public awareness of war crimes prosecution, including investigation into cases of enforced disappearances, in order to reduce negative feelings about war crimes proceedings.**

108. **Set up regular consultations with families of victims of enforced disappearance and representatives of associations of families of disappeared persons.**

109. **Provide greater institutional and financial support to families and associations of families of victims of enforced disappearance.**

110. **Promulgate a law on access to information and a proper legislative framework on archives, so as to guarantee full access to all information that could potentially lead to clarification in cases of missing persons.**

111. **Examine without undue delay all locations of potential mass graves.**

112. **Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove obstacles of the ongoing identification work.**

113. **Expedite the process of war crimes prosecutions.**

114. **Initiate a vetting process to identify all government officials who were allegedly involved in the commission of war crimes. Improve and systematize vetting measures in the recruitment and appointment of State officials.**

115. **Conduct effective negotiations and reach an agreement on war crime cases with the authorities of Kosovo in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.**

116. **Ensure media freedom and use the mass media to raise awareness of the issue of missing persons in the region.**

117. **Pay equal attention to all victims, regardless of their nationality, in respect of memorials. This principle should be integrated into future activities related to this element of reparation.**

118. **Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.**

C. Recommendations to the authorities in Kosovo

119. **Intensify efforts in the search for missing persons and the identification of human remains that have been exhumed.**

120. **Seek technical assistance from international bodies operating on the ground to conduct institutional reforms aimed at establishing an independent and efficient judicial system.**

121. **Conduct effective negotiations and reach an agreement on war crime cases with the Serbian authorities in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.**

122. **Conclude cooperation agreements with other international mechanisms involved in the investigation and prosecution of war crimes in order to facilitate technical cooperation, such as acquiring evidence, statements and documents related to the war in Kosovo.**

123. **Hold consultations with associations of families of missing persons, civil society organizations and other relevant stakeholders on the establishment of a central register on missing persons to ensure that the register contains all the information necessary to facilitate the clarification of the fate and whereabouts of missing persons in a transparent, inclusive and consultative manner.**

124. **Engage minority groups and ensure they are adequately represented in the Commission on Missing Persons. The Commission should ensure the implementation in practice of the principle of non-discrimination.**

125. **Engage associations of families of missing persons and encourage them to nominate members of the Commission on Missing Persons.**

126. **Organize joint commemorations for victims of missing persons from all ethnic backgrounds.**

127. **Adopt a law on the use in Kosovo of evidence collected by the International Tribunal for the Former Yugoslavia in order to ensure that evidence gathered by the Tribunal will continue to be admissible after the transfer of the mandate to local courts and prosecutors, protecting confidentiality rules.**

128. **Immediately open archives relevant to cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo, in order to facilitate the localization of undiscovered gravesites and to speed up the search.**

129. **Provide the families of missing persons with adequate and effective reparation. Consultations with victims from all ethnic groups should be held to hear their views**

on the specific nature of the reparation that they need. Language support should be provided upon request in the whole process.

130. Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.

131. Establish and effectively implement a comprehensive witness protection programme, with the support of international organizations.

132. Adopt a gender-sensitive approach when designing and implementing reparation programmes, in order to address gender inequality. Relocation assistance should be provided in cases where the victims live in the same community as the alleged perpetrators in order to facilitate the victims' rehabilitation and prevent them from being re-traumatized.

133. Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove the obstacles to the ongoing identification work.

134. Ensure media freedom and use the mass media to raise awareness of the issue of missing persons in the region.

135. Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.

136. Put in place a strong vetting process in order to ensure that alleged perpetrators are not appointed to positions of authority.

D. Recommendations to international bodies

137. UNMIK and EULEX should engage with international human rights mechanisms with the aim of addressing issues related to enforced disappearance. International bodies acting as transitional administrators in Kosovo should be held accountable for human rights violations.

138. All international bodies that hold relevant information regarding cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo should open their archives and facilitate the search and investigation.

139. ICRC should continue chairing the Working Group on Missing Persons and facilitate communication and cooperation in the region. ICRC should further strengthen and expand its initiatives.

140. The Working Group on Missing Persons should meet more frequently. In the meantime, the Working Group encourages UNMIK, as an observer of the body, to continue playing an active role.

141. UNMIK should seek suitable means to grant compensation to victims of human rights abuses as identified by its Human Rights Advisory Panel, especially in relation to the alleged ineffective investigations into cases of missing persons.

142. UNMIK should make additional efforts to encourage the effective continuation of investigations that were initiated prior to the transfer of power from UNMIK to EULEX.

143. **Acknowledging the challenging nature of the work of war crimes investigation and prosecution and the efforts made, EULEX must investigate all outstanding cases of enforced disappearances and bring the perpetrators to justice.**

144. **In order to encourage testimonies, EULEX, in cooperation with the authorities in Kosovo, should establish an effective and comprehensive witness protection programme, including relocation assistance.**

145. **Establish close cooperation with and invest more resources in capacity-building for local police officers, prosecutors, judges and forensic experts, including forensic archaeologists and forensic anthropologists. Ensure that ethnic Serbs are present at all training courses.**

146. **The Working Group invites the Government of Serbia, the authorities in Kosovo and the heads of mission of UNMIK and EULEX, within 90 days from the date of presentation of the present report to the Human Rights Council, to submit a timetable showing the steps they will take to implement the recommendations of the Working Group, the dates by which each measure will be taken and the dates by which they plan to finalize the implementation of the recommendations.**

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Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Mission to Montenegro* **

Summary

At the invitation of the Government of Montenegro, the Working Group on Enforced or Involuntary Disappearances visited the country from 27 to 30 June 2014.

The Working Group wishes to thank the Government of Montenegro for its invitation to visit the country and for its cooperation before and during the visit.

The visit to Montenegro took place in the context of an official regional visit during which the Working Group also visited Croatia and Serbia, including Kosovo.[1] Given the amount of time that has passed since the enforced disappearances occurred and the advanced age of many witnesses, relatives and perpetrators, there is an urgent need for everyone involved in the search for missing persons in the region to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex, is circulated in the language of submission only.

** Late submission.

[1] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

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The Working Group is concerned that regional cooperation is marred with mutual mistrust. It calls on everyone involved to contribute to fostering a trusting environment to promote regional cooperation, inter-ethnic reconciliation and social cohesion. The Working Group stresses that successful cooperation requires clear and strong political commitment from the highest levels of all parties involved.

The Working Group calls on the Government of Montenegro to establish enforced disappearance as a separate offence; to ensure efficient prosecution of war crimes in line with international standards; to adopt all measures necessary to combat impunity; and to set up comprehensive reparation programmes.

Annex

English only

Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Montenegro (27-30 June 2014)

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I. Introduction

1. At the invitation of the Government of Montenegro, the Working Group on Enforced or Involuntary Disappearances visited the country from 27 to 30 June 2014. The Working Group was represented by three members: Ariel Dulitzky, Jasminka Dzumhur and Osman El Hajjé. During the visit, the Working Group held meetings with high-level authorities, including those in charge of the implementation of international human rights standards in Montenegro, as well as with civil society groups.

2. The purpose of the visit was to examine matters related to enforced disappearances and missing persons in Montenegro, focusing in particular on truth, justice, reparation and memory for victims. While the mandate of the Working Group is to deal with issues related to enforced disappearance, the issues of enforced disappearance and missing persons are clearly interlinked in this particular context. The Working Group makes reference in the present report to victims of enforced disappearance and missing persons, and remains aware of the legal and factual differences between them.

3. The Working Group wishes to thank the Government of Montenegro for its invitation to visit the country. The delegation would particularly like to thank the Ministry of Foreign Affairs for its support for the visit. The Working Group would also like to thank the United Nations country team in Montenegro, especially the Resident Coordinator, for coordinating the joint efforts of various United Nations specialized agencies in providing logistical support to the visit.

4. During the visit, the Working Group held meetings with the Minister of Human Rights, the President of the Criminal Department of the Supreme Court and the Secretary of the Supreme Court, the State Secretary for Political Affairs at the Ministry of Foreign Affairs and European Integration, the Secretary of the Ministry of Labour and Social Welfare and the Director of the Directorate for Social and Child Protection, the Secretary and the Senior Advisor of the Ministry of Health, the Deputy Minister of Defence, the Deputy Minister of Justice, the Director of the Police Directorate and the Protector of Human Rights and Freedoms and the Secretary of that institution. The Working Group held a number of meetings with representatives of all sectors of civil society, including non-governmental organizations, activists and lawyers.

5. The invitations extended by the Government to the Working Group and other special procedures of the Human Rights Council and the level of support provided by the Government before and during the visit of the Working Group are testimonies of the commitment of Montenegro to cooperating with international human rights mechanisms and taking human rights issues seriously. The Working Group received all the documents it had requested, including the legislation and statistical data mentioned during the meetings with official authorities. The Working Group welcomes the openness demonstrated by Montenegro and encourages it to invite other special procedures mandate holders to visit the country in the near future.

II. Regional context

6. The visit to Montenegro took place in the context of an official 16-day regional visit during which the Working Group also visited Croatia and Serbia, including Kosovo. While the present report addresses matters mainly concerning Montenegro — for which the numbers of enforced disappearances and missing persons are certainly much lower than in other countries in the region — the issue of enforced disappearances and missing persons in the Western Balkans cannot be examined without taking into account the general regional

perspective.[2] The Working Group visited Bosnia and Herzegovina in 2019 (see A/HRC/16/48/Add.1). According to the International Committee of the Red Cross (ICRC), to date, the fate or whereabouts of over 23,000 persons missing as a result of the Balkan conflicts has been established. However, ICRC has indicated that over 11,000 persons are still missing in the region and that there are unidentified remains belonging to hundreds of bodies in the morgues throughout the region.[3] The Working Group identified some common issues and challenges relating to missing persons and disappearances in the region.

7. Despite impressive results in the past, progress in the search for missing persons in the region has slowed down significantly in recent years, and many families are extremely frustrated by that. It is becoming urgent to ensure that the process of identifying mass grave locations and burial places speeds up as soon as possible, primarily because memories are fading and individuals, places and events are more difficult to identify. Furthermore, some of the witnesses have died or are likely to die in the next few years. Additionally, and even more importantly, some relatives of missing persons are reaching the end of their lives and risk dying without ever knowing the truth about the fate or whereabouts of their loved ones.

8. The conflicts in the former Yugoslavia broke one country into several independent entities. That resulted in specific challenges, primarily obstacles to the prosecution of war crimes in the region, since the prosecution of war criminals may create tensions among States and entities.

9. In the absence of a legal framework for regional cooperation, searching for the disappeared and missing persons, conducting investigations and bringing those responsible for war crimes to justice become critically challenging, particularly because many victims, witnesses and perpetrators are living in the territories of different States and the scenes of the crimes are located in different countries. Often, the presence of an alleged perpetrator in another country where there is no willingness or legal grounds to prosecute leads to insurmountable obstacles to achieving accountability. Insufficient witness protection and the lack of incentives to encourage people to provide more information have also contributed to the slow progress of investigations.

10. Progress is also hampered by the fact that information and evidence that are available are often not shared across borders in the search and identification of the missing, as well as in the investigation, prosecution and conviction of war criminals. There is no centralized regional database of missing persons, not even a list of all missing persons in the region. Several representatives of organizations of families of the disappeared expressed frustration at the ongoing and slow-paced discussions on the creation of a common list of the disappeared. The Working Group notes in this respect that a meeting among governmental institutions in charge of the issue of missing persons in the Western Balkans was held in May 2015 to discuss the establishment of a joint list of missing persons in the territories of the former Yugoslavia.

11. Furthermore, some archives that may contain information on the fate and whereabouts of the missing are not fully accessible.

12. A common gap at the regional level is the absence in existing legal systems of an autonomous crime of enforced disappearance and the absence of an encompassing framework for compensation and reparation for victims and their relatives.

[2] For reports on the work of the Working Group in the region during the conflict, see E/CN.4/1994/26/Add.1, E/CN.4/1995/37, E/CN.4/1996/36, and E/CN.4/1997/55.

[3] See www.icrc.org/eng/resources/documents/interview/2013/08-28-disappeared-missing-western-balkans-milner.htm.

13. Another challenge in the Western Balkans is that between 3,000 and 5,000 of the bodies that have been exhumed have not yet been identified. Even after DNA analysis and cross-checking with the DNA database, which contains blood samples from over 97 per cent of the relatives of the victims, no match has been found in those cases. There are several possible explanations for that. It may be that, owing to the traditional methods that were used until the year 2000, there were misidentifications. Some estimates suggest that up to 30 per cent of identifications made using traditional methods may be erroneous. In order to verify the identifications that were made using traditional methods, all the bodies identified using those methods would have to be exhumed and bone samples taken for DNA testing. However, that would be an extremely difficult and painful process for the family members. It is also possible that some of the exhumed bodies are those of persons whose deaths were unrelated to the conflict. That could be the case if, for example, the bodies of victims of the conflict were buried in graveyards and their bones intermingled with those of other bodies over time. In addition, there is the possibility that the DNA samples match the blood samples from relatives of missing persons from other countries in the region, given the above-mentioned lack of a joint regional DNA database.

14. The International Commission on Missing Persons has actively promoted the signing of a declaration on missing persons. The Working Group was pleased to learn that, on 29 August 2014, Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses.[4] The Working Group welcomes this initiative, which highlights the primary responsibility of States in addressing the issue of missing persons, with the aim of guaranteeing the rights of victims. The Declaration also stresses the need for cooperation between Governments and with international and other organizations in the process of establishing the whereabouts of missing persons. The authorities in Kosovo informed the Working Group that they had expressed their willingness to become a signatory to the Declaration, to no avail. The Working Group recognizes the importance of involving the authorities in Kosovo, through appropriate means, in regional cooperation activities to address the issue of missing persons.

15. The Working Group recognizes the important work that ICRC has carried out in the Balkans in the past 20 years, including facilitating negotiations and cooperation between concerned parties. Binational initiatives, many of which were facilitated, promoted and led by ICRC, are welcome developments that should be strengthened and expanded.

16. The International Commission on Missing Persons and ICRC have carried out important work in helping States to establish the whereabouts and identity of those who went missing during armed conflicts in the region, and in coordinating joint exhumations. They also played an essential role in the process of DNA analysis and collection of blood samples from family members of missing persons, which is a key precursor to the identification of the bodies that were recovered during the exhumation processes. Moreover, the Commission has facilitated cooperation between associations of families of disappeared persons from the region and is providing permanent support to the Regional Coordination of Missing Persons' Family Associations from the former Yugoslavia, which is an umbrella group of associations of families of disappeared persons from countries in the region.

17. The Working Group notes that some initiatives have been taken for regional cooperation in the search for the disappeared and in the area of transitional justice,

[4] See www.ic-mp.org/wp-content/uploads/2014/08/signed-declaration-2.pdf

including the planned establishment of a regional truth commission (known as RECOM), as a non-political regional network of civil society organizations and individuals.

III. General situation concerning enforced disappearances and missing persons in Montenegro

18. In the period between 1945 and 1992, Montenegro was a constituent republic of the former Socialist Federal Republic of Yugoslavia. In April 1992, Montenegro and the Republic of Serbia formed a new federal State, namely the Federal Republic of Yugoslavia. In 2003, the Federal Republic of Yugoslavia was officially reconstituted as a loose union known as the State Union of Serbia and Montenegro. The Constitutional Charter of the State Union of Serbia and Montenegro, adopted on 4 February 2003, provided that the process of secession required a minimum of three years from ratification of the Charter before one of the member States could declare independence. On 21 May 2006, Montenegro held a referendum on independence in which 55.5 per cent of the voters opted for independence.

19. Montenegro is party to the core United Nations human rights treaties and the Rome Statute of the International Criminal Court, which establishes that the enforced disappearance of persons amounts to a crime against humanity. At the time that most of the relevant events took place, Montenegro was either part of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, thus all the treaties, particularly those related to international humanitarian law, were applicable in Montenegro.

20. The Working Group welcomes the ratification by Montenegro of the International Convention for the Protection of All Persons from Enforced Disappearance and the submission of its initial report in accordance with article 29 of the Convention (CED/C/MNE/1). The Working Group is pleased to learn that the State party has recognized the competence of the Committee in respect of individual and inter-State communications, pursuant to articles 31 and 32 of the Convention.

21. The Working Group recognizes the support given by the Government of Montenegro to various regional initiatives in the area of transitional justice. In particular, it welcomes the facts that the parliament of Montenegro supported the setting up of a regional truth commission to establish the facts of war crimes committed in the former Yugoslavia and that the former Prime Minister of Montenegro was the first in the region to sign the petition for the establishment of the commission. The Working Group is also pleased to learn that, on 29 April 2014, Bosnia and Herzegovina and Montenegro signed the Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Montenegro has already signed similar agreements with Croatia and Serbia.

22. As mentioned above, the Working Group also welcomes the signing, in Mostar, Bosnia and Herzegovina, on 29 August 2014 by the President of Montenegro together with leaders of Bosnia and Herzegovina, Croatia and Serbia of the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses. By signing this document, Montenegro confirmed its commitment to finding a solution to this humanitarian and human rights issue and recognized its obligation to ensure lasting peace and improve cooperation and reconciliation in the region. The Working Group encourages regional dialogues and calls for a continuation of the joint regional effort to establish the fate and whereabouts of missing persons.

IV. Legal framework

23. This section examines the parts of the current legal framework of Montenegro that are most relevant to the mandate of the Working Group. The Working Group notes that, prior to the independence of Montenegro, all the pertinent laws of the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia were applicable in the country.

24. The Constitution of Montenegro[3] established an independent and sovereign State, with a republican form of rule. The Constitution guarantees human rights and freedoms to everyone, without discrimination on any ground. It provides that all ratified and published international agreements and generally accepted rules of international law have supremacy over national legislation. According to the Constitution, ratified international treaties form an integral part of national legislation and are directly applicable when they differ from national legislation. The Constitution provides that everyone has the right to equal protection and access to legal remedy. Guaranteed human rights and freedoms may be limited only by law, within the scope permitted by the Constitution and to such an extent as is necessary to attain the purpose for which the limitation is allowed in an open and democratic society. During a proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be limited to the extent necessary. The Constitution provides that limitations may not be introduced on the grounds of sex, national origin, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal status. No limitations may be imposed on the rights to life, legal remedy and legal aid; dignity and respect of the person; fair and public trial and the principle of legality; the presumption of innocence; defence; compensation for damage for illegal or ungrounded deprivation of liberty and ungrounded conviction; freedom of thought, conscience and religion; and marriage.

25. The Working Group notes that the Criminal Code of Montenegro[4] prescribes several criminal acts related to disappearances, including criminal offences of unlawful deprivation of liberty (art. 162), abduction (art. 164) and coercion (art. 165). The Criminal Code also prescribes a group of criminal offences against humanity and other values protected under international law (arts. 426-449 (a)) including genocide, crimes against humanity, war crimes against civilian population, war crimes against the wounded and the sick, war crimes against prisoners of war, organization of and instigation to genocide and war crimes and failure to take measures to prevent the commission of crimes against humanity and other values protected by international law.

26. According to article 427 of the Criminal Code of Montenegro, the ordering or committing, as a part of a wider or systematic attack against the civil population, detention or abduction of persons followed by a refusal to acknowledge those acts in order to deny legal protection, constitutes a crime against humanity. An order to commit or direct commission of illegal deprivation of liberty and imprisonment during time of war, armed conflict or occupation constitutes a war crime against the civilian population, as established by article 428 of the Criminal Code.

27. An analysis of the provisions of the Criminal Code of Montenegro shows that enforced disappearance is not yet recognized as an autonomous crime outside the context of a widespread and systematic attack against the civilian population, when enforced disappearance constitutes a crime against humanity. The Working Group emphasizes that criminalizing enforced disappearance under domestic legislation can serve as an important

[3] Official Gazette of Montenegro Nos. 1/2007 and 38/2013.

[4] Official Gazette of Montenegro Nos. 70/03, 13/04, 47/06, 40/08, 25/10, 32/11 and 40/13.

safeguard against impunity, as well as a meaningful preventive measure to ensure the non-occurrence of enforced disappearance. The Working Group is concerned that a State that does not criminalize enforced disappearance in its domestic law may also fail to meet other obligations under international law.

28. The Working Group notes that article 129 of the Criminal Code provides that prosecution and enforcement of penalty for certain criminal offences are not subject to a statute of limitations. Those criminal offences include genocide, crimes against humanity, war crimes against the civilian population, failure to take measures to prevent crimes against humanity and other values protected under international law. The Code of Criminal Procedure[7] aims to ensure full procedural protection of the human rights and fundamental freedoms guaranteed by the Constitution and international instruments and to strike a balance between the two requirements that must be met by every proceeding — the efficiency of criminal procedure on the one hand and the best possible protection of human rights and freedoms on the other.

29. The Code of Criminal Procedure contains specific provisions regulating the protection of witnesses, including special measures and means to provide protection to witnesses in criminal procedures. The provisions contain articles on the protection of witnesses from intimidation and on special procedures for the participation of and for hearing protected witnesses.[8] Those measures can be used as important tools in the prosecution of crimes against humanity.

30. In addition, the Working Group notes that the Law on Witness Protection[9] regulates conditions and procedures for providing out-of-court protection and assistance to a witness, when reasonable fear exists that testifying for the purpose of bringing evidence about a criminal offence would expose the witness to severe danger to his or her life, health, corporal inviolability, freedom or property, where other measures do not suffice.

31. The Working Group also notes that provisions in the Law on the Enforcement of Criminal Sanctions[10] and relevant by-laws, and the Law on Internal Affairs,[11] guarantee equal treatment and respect for the personality and dignity of each person, with full implementation of the principles of the rule of law.

V. Right to the truth

32. The Working Group notes that, although the conflicts in the region were not waged on the territory of Montenegro, being part of the Federal Republic of Yugoslavia from April 1992, its engagement in the regional conflicts resulted in cases of enforced disappearances. In Montenegro, 72 individuals were originally registered as missing as a result of the conflicts in the former Yugoslavia. Of those 72, the remains of 11 persons have been found, while the fate and whereabouts of the other 61 were still unknown. According to the information that the Working Group collected during the visit, of those 61 individuals, 43 went missing in Kosovo, 12 in Bosnia and Herzegovina, 6 of them related to the Strpci case, and 6 in Croatia. After its visit, the Working Group was informed by the Government that the Commission on Missing Persons of Montenegro, in cooperation with other associations dealing with the same issue in neighbouring countries, had resolved the cases

[7] Official Gazette of Montenegro Nos. 57/2009 and 49/2010.
[8] Article 120-124 of the Code of Criminal Procedure.
[9] Official Gazette of Montenegro No. 65/04.
[10] Official Gazette of Montenegro No. 17/11.
[11] Ibid.

and handed over of the remains of 14 persons who, at the time of their disappearances, had been citizens of Montenegro, or whose disappearance had been reported by individuals who were citizens of Montenegro at the time the disappearance was reported. Since July 2014, the remains of 3 persons whose families live in Montenegro and were listed as missing persons in neighbouring States have also been handed over.

33. During its visit, the Working Group learned that in 2011, the Government of Montenegro established the Commission on Missing Persons. After its visit, the Working Group was informed that, on 18 December 2014, Montenegro decided to terminate the mandate of the Commission. On 6 February 2015, pursuant to a decision of the Minister of Labour and Social Welfare, a new Commission on Missing Persons was established. The Commission that existed between 2011 and 2014 had been responsible for studying and preparing proposals to address the issue of persons who had gone missing from the territory of Montenegro during the armed conflicts in the former Yugoslavia and for fulfilling the obligations arising out of international treaties and agreements relating to resolving the issue of missing persons. The Commission had also been obliged to coordinate the work of the relevant bodies and organizations in the process of the search for, exhumation and identification of missing persons, and to cooperate with the competent authorities and associations of missing persons' families in order to resolve their status.

34. The Working Group noted that the Commission's mandate was limited to addressing the issue of persons who had gone missing from the territory of Montenegro in the armed conflicts in the former Yugoslavia. Such a vague mandate could lead to the exclusion of some missing persons in the work of the Commission.

35. The members of the Commission were representatives of the Ministry of Justice, the Ministry of Labour and Social Welfare, the Ministry of the Interior, the Ministry of Foreign Affairs and European Integration, the Ministry of Defence, the Institute for Refugees and the Red Cross of Montenegro. The Working Group was informed that the new Commission, which was established in February 2015, would include a representative of the Ministry for Human and Minority Rights. In April 2012, the previous Commission signed an agreement on mutual cooperation in the process of locating missing persons with the Commission on Missing Persons of Serbia. No such agreements have been signed with Bosnia and Herzegovina, Croatia or Kosovo. During the Working Group's visit, the members of the previous Commission expressed their readiness to sign cooperation agreements with relevant bodies from neighbouring countries. The Working Group stresses that cooperation with other parties in the region in the process of gathering information would help speed up the search for missing persons, including the identification of bodies and of the locations of previously unknown graves.

36. During its visit, the Working Group noted with concern that the previous Commission did not take a proactive approach to searching for missing persons and served mainly as a coordinating body. Its main role had been to facilitate the handover of remains of missing persons that had been exhumed and identified by other parties in the region, and to support the families of missing persons in the burial process. Depending on the circumstances, the Commission held meetings infrequently, approximately twice a year. One priority of the new Commission should be the signing of cooperation agreements with the authorities in Bosnia and Herzegovina, Croatia and Kosovo that are in charge of searching for disappeared persons. After its visit, the Working Group was pleased to learn that procedures are under way for the signing of an agreement on cooperation with the Commission on Missing Persons of Kosovo.

37. The families of missing persons have the right to the truth, which includes knowing the fate and whereabouts of their loved ones. This is an absolute right enshrined in the International Convention for the Protection of All Persons from Enforced Disappearance, to which Montenegro is a party. The Working Group recalls in this respect its general

comment on the right to the truth in relation to enforced disappearances, which states that "the right to the truth is both a collective and an individual right. Each victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society".[12]

38. The Working Group notes with appreciation that the Law on Free Access to Information came into force in 2013. That law could facilitate the realization of the right to the truth of families of missing persons by enabling citizens of Montenegro to request access to information held in any form by public bodies. However, the Working Group was concerned to learn that the implementation of the law in the period between August 2013 and July 2014 was far from satisfactory. Challenges are posed particularly in the implementation of article 12 of the law, which defines proactive access to information and obliges institutions to disclose information of public interest on its web pages.

39. The Working Group is also concerned that the Office of the Prosecutor has not taken effective measures to maintain transparent and permanent communication with citizens. The Working Group received allegations that the Office of the Prosecutor failed to meet its obligations to disclose information and documents of public interests. Also, information provided on the website of the Office of the Prosecutor is outdated. The Working Group also received information on the inadequate implementation of the Law on Free Access to Information by courts. It was reported to the Working Group that the courts have refused requests for information related to final court decisions.

40. The Working Group emphasizes the importance of ensuring openness and transparency concerning judicial decisions and the consistent application of the Law on Free Access to Information, which allows refusal of access to information only when it is so required by public interest. Information held by public entities is of significant value to society. Ensuring free access to information can contribute to the promotion of transparency and accountability. The Working Group states in its general comment on the right to the truth in relation to enforced disappearance that the right to know the truth refers to "the right to know the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s)".[13]

41. The Working Group welcomes the fact that, after its visit to Montenegro, a memorandum of understanding was signed between the Agency for Personal Data Protection and Free Access to Information and the Centre for Democratic Transition to promote the Law on Free Access to Information and raise awareness about the rights and obligations arising from that Law. The Working Group also welcomes the fact that a similar memorandum has been signed between the Office of the Supreme State Prosecutor and the Centre for Democratic Transition, with the goal of establishing cooperation and joint activities to enhance transparency, to improve public relations and to conduct training sessions.

VI. Right to justice

42. The Working Group welcomes the fact that Montenegro has established the necessary legal and institutional framework to prosecute war crimes at the national level, including the establishment of the Department for the Suppression of Organized Crime, Corruption, Terrorism and War Crimes under the authority of the Supreme State

[12] See A/HRC/16/48, para. 39.
[13] Ibid.

Prosecutor. After its visit, the Working Group was informed that a Special Division in the High Court of Podgorica had been established pursuant to the Law on Courts,[14] which entered into force on 20 March 2015. The Special Division is competent to handle war crime cases irrespective of the rules on territorial jurisdiction. At the same time, the Special Division within the High Court in Bijelo Polje ceased to exist pursuant to the entry into force of the Law on Courts.

43. However, an overview of the prosecution of war crimes in the country demonstrates that Montenegro has not complied with its obligations under international law to bring justice to victims of war crimes committed during the armed conflicts in the 1990s. Although compensation has been paid to some of the families of victims, most of the perpetrators of war crimes continue to enjoy impunity. During its visit, the Working Group received information on six war crime cases that have been prosecuted and tried in Montenegro. They are known as Morinj, deportation of refugees, Kaluderski Laz, Bukovica, Štrpci and Klapuh.

44. The Working Group notes that there has been a long delay between the commission of the crimes and legal proceedings in most of the war crime cases. While war crimes charges have been brought in a number of cases, the majority of the persons accused of war crimes have been acquitted by court decisions and very few were convicted in the 1990s. There have not been any convictions in recent years. The Working Group notes with concern that no one has been convicted on the basis of command responsibility. None of the perpetrators who ordered the crimes have been held accountable. Some of the few direct perpetrators who were convicted received sentences shorter than the statutory minimum, based on mitigating factors that would not merit such treatment in the practice of the International Tribunal for the Former Yugoslavia.[15]

45. In the case concerning the deportation of refugees, some victims allegedly disappeared after being deported from Montenegro. After the visit, the Working Group was informed that in that case, the procedure for requesting the protection of legality was ongoing before the Supreme Court. The Working Group notes with deep concern that the courts in Montenegro applied a restrictive interpretation of domestic law and international humanitarian law in relation to war crime prosecution. The Working Group is particularly concerned that the interpretation applied by the courts in Montenegro neglects the standard established by the International Tribunal for the Former Yugoslavia in relation to the definition of war crimes. In this regard, the Working Group encourages the courts in Montenegro to take into account the jurisprudence of the International Tribunal for the Former Yugoslavia and other relevant international tribunals. In addition, the Working Group considers that this practice is in violation of article 9 of the Constitution of Montenegro, which states that ratified and published international treaties and generally accepted rules of international law are an integral part of the Montenegrin legal system, have supremacy over domestic legislation and are directly applicable where they differ from domestic legislation.

[14] Official Gazette of Montenegro No. 11/15.

[15] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1999 is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990s. Those indicted by the Tribunal include heads of State, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Bosnia and Herzegovina, Croatia, Serbia, the former Yugoslav Republic of Macedonia and Kosovo. See www.icty.org/sections/AbouttheICTY.

46. It is reported that persons who have been accused of war crimes, were in detention and were later acquitted could file a compensation claim. While the Working Group acknowledges the importance of protecting the legal rights of all individuals, it stresses that it is crucial for the authorities of Montenegro to uphold social justice and protect the dignity of the victims and their families.

47. As mentioned above, the effective prosecution of those responsible for war crimes committed during the conflicts on the territory of the former Yugoslavia, owing to their interdependence, requires that the prosecutors of the countries in the region cooperate. The Working Group welcomes the fact that the Prosecutor of Montenegro has signed the Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide with the Prosecutors of Bosnia and Herzegovina, Croatia and Serbia.[16]

48. The Working Group also notes that a number of capacity-building activities were organized by international organizations in 2011 with the aim of strengthening the capacity of Montenegrin judges and prosecutors to investigate, prosecute and try war crimes cases effectively. Nevertheless the Working Group notes that there is still a lack of expertise in this area among judges and prosecutors. The Working Group observes that the lack of accountability and the widespread impunity for certain serious violations of international human rights law and international humanitarian law in Montenegro have a negative impact on truth, justice and reconciliation.

VII. Right to reparation

49. Montenegro has not adopted a specific law on missing persons that comprehensively regulates the status and rights of missing persons and their families. The Working Group notes that article 142, point 11, of the Code of Criminal Procedure defines a victim as a person to whom physical or mental pain or suffering, or damage to their property, was caused or whose human rights and freedoms were violated by means of an illegal act prescribed in the law as a criminal offence. It was brought to the attention of the Working Group that the same definition of a victim is also contained in the newly adopted law on compensation for damage to the victims of violent criminal offences.[17] Montenegrin legislation provides a narrow and very limited definition of victim, and only in the context of criminal proceedings. That definition does not grant victim status when criminal proceedings against a perpetrator have not been initiated. The Working Group recalls the definition of victim of enforced disappearance and the victim's rights prescribed in article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance.

50. Montenegro ratified the European Convention on the Compensation of Victims of Violent Crimes in 2010. That Convention obliges Montenegro to grant compensation to victims of intentional violent crimes that were committed on its territory. The Working Group notes that Montenegro has not fully realized that obligation yet.

51. The right to compensation for damage suffered as a result of unlawful actions is guaranteed by article 38 of the Constitution of Montenegro, according to which a person deprived of liberty in an illegal or ungrounded manner or convicted without grounds shall

[16] The Protocol was signed with the Prosecutor of the Republic of Croatia on 28 July 2006, with the Special Prosecutor for War Crimes of the Republic Serbia on 31 October 2007 and with the Prosecutor of Bosnia and Herzegovina in April 2014.

[17] Official Gazette of Montenegro No. 35/2015.

have the right to compensation for damage from the State. That right, guaranteed by the Constitution, can only be achieved through civil procedure. The Law on Contracts and Torts provides that the right to compensation can be realized by bringing claims to civil courts. In order to receive a pension or compensation, relatives of missing persons have to initiate proceedings to declare the missing person dead. The victims can also appear in criminal cases as injured parties and request compensation from a defendant in accordance with the Code of Criminal Procedure.

52. The Law on Social and Child Welfare guarantees some rights to the families of missing persons under the same social scheme that is applicable to every citizen of Montenegro based on personal or family circumstances. Those rights include basic material benefits and social services, child protection, including allowances for care and assistance, health care, funeral expenses and one-time financial assistance. In order to be eligible for those benefits, applicants must be citizens of Montenegro residing in Montenegro. That precludes family members of persons who disappeared on the territory of Montenegro from enjoying their social rights if they are citizens of other countries and if they do not reside in Montenegro. The Working Group notes that there is no a specific legal regulation that recognizes disappeared persons' relatives as victims and regulates their rights.

53. During its visit, the Working Group noted that the Law on Health Care did not recognize the family members of missing persons as health rights holders. The Working Group was informed that amendments to the Law were being reviewed by the parliament. After its visit, the Working Group was pleased to learn that amendments had been made to the Law, article 17 of which now stipulates that funds are provided for the health care of the family members of victims of enforced or involuntary disappearance. The Working Group welcomes the amendment, which recognizes the special status and needs in the area of health care of family members of missing persons.

54. The Working Group stresses that in 2008, the Government of Montenegro recognized State responsibility in the case of the deportation of Muslim refugees from Herceg Novi and paid compensation totalling €4,135,000 to 193 victims. The Working Group highlights that this creates an important precedent for the whole region, not only owing to the significant amount paid, but more importantly, it is an implicit recognition of State responsibility. However, the Working Group notes that the Government has not showed any willingness to conclude a settlement in the subsequent claims filed in 2010 by other victims of the same deportation case. It is unclear what criteria are used by the Government to enter into settlement agreements with victims.

55. The Working Group notes that compensation in other cases has been paid only after judicial decisions. With regard to the victims in the Morinj and the Kaluderski Laz cases, in February 2013, the court in Podgorica decided to grant compensation to seven victims. However, more than 100 other victims in those cases are still awaiting decisions from civil courts, the proceedings of which have been suspended until the final judgements in the relevant domestic criminal proceedings have been adopted. The Working Group notes that in those cases, final binding criminal judgements were adopted in 2014 and in the Kaluđjerski Laz case, the defendants were acquitted. Concerning other compensation cases, domestic courts have rendered four judgements granting compensation to the families of victims in the Strpci case. In 11 other cases, the compensation claims have been dismissed as unfounded, while in 13 cases the plaintiffs withdrew their claims. With regard to reparation in the Bukovica case, in 20 civil cases a lower court decided that reparation would be awarded in the form of compensation, but the High Court overturned that decision on appeal.

56. The Working Group emphasizes that classic court proceedings cannot be the only path to reparation because they are too cumbersome for individual victims and do not address the whole range of measures. The Working Group notes that, although some of the

victims of the conflicts have received compensation for the serious suffering they endured as a result of crimes committed during the conflicts, many of them are still awaiting adequate and effective reparation. The lack of recognition of the victims in cases of missing persons in Montenegro limits them from enjoying their rights. Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance indicates that "victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible". The lack of recognition of the victims in cases of missing persons also falls short of the requirements specified by the Working Group in its general comment on article 19 of the Declaration, according to which the right to redress of victims of an act of enforced disappearance and their family places States "under an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation".[18] As stated in its 2013 annual report, the Working Group considers that the term "redress" in article 19 of the Declaration includes essentially the concept of "reparation", even though it encompasses that of "effective remedy" as well.[19]

57. The Working Group notes that Montenegro lacks a comprehensive framework to guarantee reparation for victims. Such a framework should include recognition, compensation, rehabilitation, memorials, guarantees and other forms of reparation as defined by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

58. The Working Group welcomes the construction of a memorial to the victims of the civil war between 1991 and 1995. This is a significant symbolic measure for the realization of the right to the truth and memory about what happened in the past.

National institutional framework of human rights

59. The Constitution of Montenegro provides for the establishment of a Protector of Human Rights and Freedoms (Ombudsperson). Article 81 of the Constitution provides that the Protector of Human Rights and Freedoms of Montenegro is an independent and autonomous authority who takes measures to protect human rights and freedoms. The Protector exercises his or her duties on the basis of the Constitution, the law and ratified international agreements, observing also the principles of justice and fairness. The Protector is also the national preventive mechanism, established in accordance with the Optional Protocol to the Convention against Torture, and the national mechanism for protection against discrimination under the Law on Prohibition of Discrimination. The Protector is elected by a majority of votes of all members of the parliament, based on nomination by the President of Montenegro who is obliged to consult civil society. The Working Group notes that the Law on the Protector of Human Rights and Freedoms of Montenegro, as amended in 2014, does not comply with the Opinion issued thereon by the Council of Europe Directorate General of Human Rights and Rule of Law on 27 November 2013. The opinion suggested that the Protector should be elected by a qualified majority of the parliament. In that regard, the Working Group notes that the Constitution of Montenegro provides for the appointment of the Protector by a majority vote of all members of the parliament. The Working Group stresses that a broad consensus in the parliament would strengthen the

[18] See E/CN.4/1998/43, para. 72.
[19] See A/HRC/22/45, para. 48.

Protector's independence, impartiality and legitimacy and ensure public confidence in the institution.

60. The Protector examines human rights violations based on complaints received from citizens or ex officio. The Working Group notes that the mandate of the Protector should be developed in order to enable him or her to take a proactive role in the protection of victims' rights, particularly in cases in which serious human rights violations have allegedly occurred or the rights of vulnerable persons have allegedly been violated.

VIII. Conclusions and recommendations

61. **Considering the amount of time that has passed since the disappearances occurred in the Western Balkans and the very advanced age of many relatives and witnesses, there is an urgent need for everyone involved in the process of searching for missing persons to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared. The issue of disappearances should be considered a humanitarian as well as a human rights issue on the agenda of political processes.**

62. **The Working Group acknowledges the current working-level cooperation that takes place between forensic experts, prosecutors and judges across the region. Successful cooperation requires clear and strong political commitment from the highest levels of all parties involved. Currently, regional cooperation is marred ny mutual mistrust, which results, inter alia, in delays in exhumations. Therefore, building trust between concerned parties is of high importance; they must all contribute to that process by putting ill-will behind them and fostering a trusting environment that will promote regional cooperation. In the meantime, mature political conduct and determined political leadership are required in order to foster the inter-ethnic reconciliation and social cohesion that could eventually help to establish the truth in the region.**

63. **The Working Group reiterates its gratitude to the Government of Montenegro for the invitation and sincere cooperation it demonstrated with the Working Group throughout the visit. During the visit, the Working Group was deeply saddened by the unbelievable suffering that the relatives of missing persons endured and have continued to endure for so many years. In the hope of being able to contribute some elements of a solution, the Working Group reiterates its offer of future cooperation and dialogue with all stakeholders.**

A. Regional recommendations to Governments and authorities

64. **Act with due urgency and speed in the matter of enforced disappearances, as required by the Declaration on the Protection of All Persons from Enforced Disappearance and other international obligations.**

65. **Disclose all information on mass graves and make that information accessible to all countries and authorities in the region.**

66. **Ensure high-level commitment to clarifying the fate and whereabouts of all missing persons, bringing all perpetrators to justice and ensuring full reparation for all victims.**

67. **Reinvigorate efforts to establish a common regional list of the disappeared.**

68. **Speed up the process of tracing missing persons through strengthened cooperation with institutions engaged in tracing disappeared persons in neighbouring countries, especially between prosecutors and judicial institutions. Such cooperation must include the exchange of relevant evidence.**

69. **Everyone involved must support the search for missing persons by providing relevant information and documentation at the national and regional level.**

70. **Continue the regional dialogue on missing persons and initiatives aimed at finding solutions to properly solve the issue.**

71. **Implement fully the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses, signed by Bosnia and Herzegovina, Croatia, Montenegro and Serbia.**

72. **Offer more in-service training to judges and prosecutors on the Declaration on the Protection of All Persons from Enforced Disappearance and other international instruments.**

73. **Immediately open archives that are relevant to cases of enforced disappearances in order to facilitate the localization of undiscovered gravesites and to speed up the search for missing persons.**

B. Recommendations to Montenegro

74. **Establish enforced disappearance as a separate offence in accordance with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance. The offence of enforced disappearance should be punishable by appropriate penalties that take into account its extreme seriousness.**

75. **Ensure efficient prosecution of war crimes in line with international standards. The authorities of Montenegro should ensure that war crime cases are processed in an independent, impartial, efficient and professional manner that complies fully with international human rights law and international humanitarian law.**

76. **Adopt all the measures necessary to combat impunity for violations of human rights.**

77. **Ensure that the judiciary, in particularly the higher courts, including the Constitutional Court and Supreme Court of Montenegro, take into account the jurisprudence established by the International Tribunal for the Former Yugoslavia and other international tribunals in relation to war crime prosecution and respect relevant standards established by international law and the Declaration on the Protection of All Persons from Enforced Disappearance.**

78. **Provide systematic training in international criminal law and international humanitarian law for Montenegrin prosecutors and judges.**

79. **Ensure that all victims of war crimes are provided with effective access to justice and adequate reparation. In this respect, the status of families of missing persons should be recognized by law and their rights should be guaranteed in a non-discriminatory manner.**

80. **Establish an effective public system of free legal aid to allow relatives of missing persons to obtain legal assistance if they cannot afford it.**

81. **Set up a programme of comprehensive reparation that includes not only compensation but also restitution, rehabilitation, satisfaction, including restoration of**

dignity and reputation, and guarantees of non-repetition. A gender-sensitive approach should be taken when designing and implementing reparation programmes.

82. **Continue regional dialogues and contribute to a joint regional effort to establish the fate and whereabouts of missing persons.**

83. **Increase transparency by ensuring that the government authorities and the judiciary disclose information of public interest on their web pages in accordance with article 12 of the Law on Free Access to Information. The authorities of Montenegro should continue activities aimed at ensuring free access to information.**

84. **Include a representative from the Prosecutor's Office in the Commission on Missing Persons. The Commission should hold meetings more frequently and work in a more proactive manner in order to contribute actively to the search for missing persons.**

85. **The Commission on Missing Persons should sign protocols of cooperation with its counterparts in Bosnia and Herzegovina, Croatia and Kosovo.**

86. **Ensure the integrity and independence of the Protector of Human Rights and Freedoms as a national human rights institution that complies fully with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Office of the Protector should be provided with sufficient resources. The Working Group recalls that the election of an ombudsperson should be carried out in accordance with the Paris Principles.**

87. **The Working Group invites the Government of Montenegro, within 90 days from the date of presentation of the present report to the Human Rights Council, to submit a timetable showing the steps it will take to implement the recommendations of the Working Group, the dates by which each measure will be taken and the dates by which it plans to finalize the implementation of the recommendations.**